His Excellency Martin Van Buren
with the last MESSAGE with Docu
respect of Richard H. Baptist
OF THE

GOVERNOR OF VIRGINIA,

COMMUNICATING

A CORRESPONDENCE

BETWEEN THE

GOVERNORS OF VIRGINIA AND NEW YORK,

IN RELATION TO CERTAIN

FUGITIVES FROM JUSTICE.

PRINTED BY ORDER OF THE
HOUSE OF DELEGATES OF VIRGINIA.

RICHMOND:
SAMUEL SHEPHERD—PUBLIC PRINTER.
1840.

Executive Department,
December 2, 1840.

Sir,

Enclosed is a communication which you are respectfully requested to submit to the house of delegates.

Your obed't serv't,

THOMAS W. GILMER.

To the Speaker of the
House of Delegates.

MESSAGE.

EXECUTIVE DEPARTMENT,
December 2, 1840.

Fellow-Citizens of the Senate and House of Delegates:

The correspondence between this department and the governor of *New York*, and the executive authorities of the slaveholding states, required by certain resolutions of the last general assembly, form, in my estimation, a proper subject for a special communication; and I accordingly submit the same for your consideration.

I availed myself of the first occasion, after the executive trust devolved on me, to bring this subject before the governor of *New York*, in order to afford him an opportunity to comply with the request of the last general assembly, by "urging its consideration on the legislature of his state." Anxious, if possible, to avoid the necessity of "invoking the co-operation of the slaveholding states," I spared no pains to induce the governor of *New York* to adjust a question which was still entirely within his control; and notwithstanding his delay in meeting it, I determined not to execute the fourth resolution of the general assembly, while a hope remained that this controversy could be otherwise settled. I was not advised until the 12th of November, of the ultimate decision of the governor of *New York* to persist in his original refusal to surrender these fugitives. I then lost no time in complying with the fourth resolution of the general assembly, and in exerting all the power with which this department was invested, to bring these fugitives to justice. I immediately offered a suitable reward for their apprehension, and though a considerable time has elapsed since the perpetration of their offence, I am not without hopes that this means may still prove effectual. At an earlier stage of this controversy, the apprehension and conviction or acquittal of these offenders might have terminated, or prevented the serious questions which have subsequently arisen; but the importance which has been imparted to them by the repeated and inflexible refusals of the governor of *New York*, to acknowledge the only rule which has been hitherto known and esteemed sufficient for their adjustment, will expose us to continual depredation and danger, though the authority of our laws may be successfully vindicated in this instance. The points of view in which this subject has been considered by the governor of *New York*, do not admit of compromise or concession. They strike

boldly at the foundation of the social relations of the states, if they do not disturb the very elements of society itself, in all the slave-holding states. If the positions he has assumed in reference to this controversy, are sound, we are exposed to the contagion of every moral epidemic, while we are destitute of any substantial rights as a state, and deprived of all the privileges of a nation.

The question involved in this controversy, I respectfully apprehend, has not been met by the governor of *New York*. It is a question arising under the constitution of the *United States*, and not under the law of nations, or under the common law, as it is understood at *Westminster Hall*, or at *Albany*. The federal constitution, which, with every law made in pursuance of it, is the supreme law of the state of *New York*, contains the following clause:

"A person charged in any state with treason, felony or other crime, who shall flee from justice and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up and removed to the state having jurisdiction of the crime."

This applies to citizens of all the states, as well those of the state where the offence is committed, as of any other state in which they may have taken refuge; and there is no more obligation in this case to surrender a citizen of *Virginia*, than a citizen of *New York*. The law of nations, on which the governor of *New York* relies for his construction of the constitution, applies with more rigour to the case of a citizen or subject of the government on which the demand is made, than to that of one who has fled from his own government. While in such case the government is bound either to surrender or to punish its own citizens, it is not bound to surrender the citizen of another government in the absence of a treaty. It is maintained, however, that under our constitution the governor of *New York* is bound to surrender a citizen of his state, to the same extent, and by the same authority, which binds him to surrender a citizen of *Virginia*. The constitution of the *United States* provides that "the citizens of each state are entitled to all the privileges and immunities of citizens in the several states." The citizen of *Virginia*, therefore, while in *New York*, is entitled to the same protection under the state and federal laws, as the citizen of *New York*, while the citizen of *New York* when in *Virginia*, owes the same obedience to our laws as our own citizens. Does the governor of *New York* restrict his doctrine to the native citizens of that state, or does he extend it to all persons temporarily sojourning there? If he adopts the restricted sense, then the citizens of other states are not "entitled to the same privileges and immunities" in *New York* as the citizens of that state; and if he adopts the other, then he is not bound to surrender any one who is not charged with an offence known to the laws of his state. It is conceived that every legal citizen of *New York* is also a citizen of the *United States*, in the sense of the constitution; and unless the citizens of other states are aliens there, they are entitled, under this novel construction of state sovereignty, to a complete exemption from the legal consequences of crimes committed elsewhere, if they are not crimes known to the

laws of *New York*, or to the still more indefinite standard which the governor designates, as the "universal law of all civilized countries." The large and respectable number of European emigrants, resident in the state of *New York*, have not been made citizens of that state only. They are citizens of the *United States*. Does the governor consider them beyond the pale of his state sovereignty? It may be questioned whether the class to which the fugitives in this instance belong, viz: free negroes, whether they have been born in *New York*, or have fled thither to escape the penitentiary, are or can become citizens of that or of any other state, in the sense of the federal constitution, because nature has opposed insuperable reasons to their acquiring there or elsewhere, "all the privileges and immunities of citizens." It may be asked, then, when and where this peculiar exemption of the citizens of *New York* from punishment for their crimes commences, and when and where it terminates?

If the law of nations, instead of the constitution, were our guide, it would be more easy to perceive the distinction which the governor attempts to establish between the citizens of *New York* and citizens of the *United States*, in this respect. The obligation to surrender the fugitive in any case, is imposed by the constitution of the *United States*, and it is either a perfect obligation to surrender all persons charged with "treason, felony or other crime," or it is no obligation at all.

But for the federal constitution, the states might, and no doubt would, enter into special compacts or treaties with each other, as they would with other foreign countries, on the subject of fugitives from justice. That instrument, however, prescribes that "no state shall enter into any treaty, alliance or confederation," nor "without the consent of congress, enter into any agreement or compact with another state, or with a foreign power, or engage in war." If the constitution was intended merely to establish the principles of international law among the states, it has done no more than record certain abstract maxims, while it takes away all practical remedies. The governor of *New York*, in maintaining his idea of independent and exclusive state sovereignty, as it regards the right to shelter fugitives from criminal justice, omits to consider that remedies are as indispensable to sovereignty as rights, and that rights without remedies are unavailing. If the surrender of a felon is incompatible with the sovereignty of *New York*, it may be necessary to the sovereignty of *Virginia;* and in the absence of any constitutional provision, as he contends, and without the power to make treaties, or to levy war, the two states are certainly placed in a very anomalous condition. How can such questions between the states be settled, if they have conceded no power for that purpose to the federal government, and retained none themselves? There is no community on earth, however small its territory, or impotent its resources, whether it is called a commonwealth, kingdom or province, which, if it can raise a flag, does not possess some means by which it can intelligibly define its rights, and at least demand reparation for its wrongs.

The clause of the constitution which has been quoted, certainly contemplated some persons who might be surrendered, and certain classes of offences for which they might be demanded. If there is no class of persons in any of the states peculiarly privileged to perpetrate crimes with impunity, and the offence charged in this case is within the obvious meaning of the constitution, *Virginia* is justified in her demand on *New York*. The governor of that state admits that there are many "offences" for which he would feel bound under the constitution to surrender a citizen of *New York*. He thus enumerates them—"I cannot admit that the science of jurisprudence is as imperfect and vague as you suppose. The principles of a moral law were written by the hand of God in the hearts of men. The light of revelation brings them out in bolder relief; and I apprehend that on examination of the common law, the civil law, and the statutes of all civilized and christian countries, it will be found not only that murder, treason, arson, burglary, forgery, perjury, rape, incest, bigamy and the like, are crimes, but that they are neither 'lesser faults' nor 'ordinary transgressions;' while adultery, petty stealing, libels, trespasses upon lands, and the like, are not regarded as 'crimes of great atrocity, or deeply affecting the public safety.'"

This enumeration is supposed to contain the list of offences which the governor of *New York* would feel warranted by the laws of his state, or by the "universal law of all civilized countries," in recognizing as crimes within the meaning of the constitution. He has distinctly admitted that there are crimes for which he would surrender a fugitive; and it remains for him to shew that the offence charged in this case is an exception from the constitutional rule which he deems comprehensive enough to embrace so many others. It is singular that his excellency has omitted *theft* as one of those offences recognized as a crime by the laws of his state, or by the "universal law of all civilized countries." One of the ten commandments, in which "all civilized countries" profess to recognize "the hand of God" and "the light of revelation," is in these words—"Thou shalt not steal." While "petty stealing" is cited as one of the minor offences under "the common law, the civil law, and the statutes of all civilized and christian countries," we are not informed by the governor of *New York* how much or how little a felon may be allowed to steal before his excellency would feel bound to surrender him under the constitution. It is a question more worthy of being considered by casuists than statesmen, how far the moral guilt of the offender is affected by the amount of the theft, and I will not undertake to decide whether it is "the science of jurisprudence," or the distinctions of his excellency, which are "imperfect and vague." I shall not attempt to prove that theft is a "felony or crime" within the meaning of the constitution. This may be assumed in *Virginia*, if it is not conceded by the "universal law of all civilized countries;" and it only remains to inquire whether stealing a slave is theft. Slaves are the subjects of property under our laws. They are recognized as such by the constitution of the *United States*, and the master is authorized to assert and recover his property in his slave in the state of *New York*. They are recognized

as subjects of property by the laws of *New York*. The seventh section of the act of the *New York* legislature, passed May 6, 1840, is as follows:

"If the finding of the jury be in favour of the claimant upon all the matters submitted, the court or officer before whom such hearing shall have been had, shall grant to such claimant a certificate stating that it having been found by a jury that such fugitive (who shall be particularly described in such certificate) doth owe service or labour to the person claiming the same under the laws of some other state in the Union (naming such person and the state under whose laws such claim is sustained), and that such fugitive escaped from such state into this state, and thereby allowing such person or his agent (who shall also be named in such certificate) to take such fugitive and convey him to the state from which he fled; which certificate shall authorize the person receiving the same to remove the fugitive therein named, without any unnecessary delay, through and out of this state, on the direct route to the state from which he fled."

The terms here used as descriptive of the slave and the rights of the master from whose service he may have escaped, are the same as those employed in the third clause of the second section of the fourth article of the federal constitution. It will not be denied that they refer to slaves within the state of *New York*, who "owe service or labour" to those claiming them as property under the laws of some other state. The governor of *New York* says, "For the purpose of applying these principles (the laws of nations) to the case before me, I shewed that the laws of this state (*New York*) did not admit the principle that one person could be the property of another, and consequently that they did not admit the possibility that one man could be stolen from another." I assumed that the laws of this state harmonized in all respects with the universal law of all civilized countries, and I maintained that the case presented in the requisition was one not included among those in which, by the law of nations, a right to demand, and an obligation to surrender, existed between independent and sovereign states, and consequently, as an inference from these positions, that it was not a case within the meaning of the constitution."

The statute of *New York* which has been quoted, and which was passed after this particular subject had been communicated to the legislature and referred to one of its committees, is certainly considered by the governor as one of the laws of that state, and if it should not, like a previous similar act on the same subject, be annulled as unconstitutional by the judicial power, it will continue to be so regarded by the citizens as well as the governor of *New York*. Though this act was passed with the evident intent to hinder and delay, if not to defeat, that justice which the federal constitution had prescribed for the citizens of other states, and its validity is therefore questionable, there has never been a period, it is believed, for many years, when laws were not to be found in the code of *New York*, distinctly recognizing, as this act does, the right of the master to his slave as property within the territory and jurisdiction of that state. How then does

the governor shew "that the laws of his state did not admit the principle that one person could be the property of another?" Upon what principle are slaves surrendered by the laws of that state on the claim of their masters, if not as property? The governor cannot, on his own principles, consider them as "fugitives from justice," surrendered under the "universal law of all civilized countries." The law of his state provides that they shall be surrendered as fugitives who "owe service or labour to the person claiming the same." They are then property under the laws and within the state of *New York;* and the owner is authorized to recover and remove them as such to the state where he resides. It is generally understood by "the universal law of all civilized countries," and of course, I presume, by that of *New York*, that where a right of property exists legally, it is theft to steal such property; and it will scarcely be maintained by the governor that when a fugitive slave had been adjudged to his owner under the laws of *New York*, it would be among the "actions in themselves harmless or meritorious" for a citizen of that state, even within its limits, to steal such slave. It has been but a few years since slavery existed as one of the domestic institutions of *New York:* was the stealing a slave then regarded as one of those "constructive felonies created by law, and involving no moral guilt, contravening none of the principles of moral justice, and exempt from censure by the universal law of civilized states?"

It is shewn, then, that "the principle, that one person can be the property of another," has been and still is recognized by the statute laws of *New York*, as well as by the federal constitution. This principle has been recognized by most ancient and modern governments of the world, and is now recognized by every state in our Union. I confess, then, that I am at a loss to perceive, what rule of civil polity or political justice, the governor of *New York* alludes to, when he speaks of "the universal law of all civilized countries." I apprehend it would be difficult to point out those "civilized countries" of *Europe*, whose governments have not, either by their immediate laws, or in their foreign intercourse, acknowledged "the principle that one person can be the property of another." The sacred Bible is regarded by "all civilized countries" as "the light of revelation;" and besides the denunciations of theft which it contains, it "admits the principle that one person can be the property of another."

If, however, all the instances and examples which have been cited, are supposed by the governor of *New York*, to be beyond the line of civilization, he will surely admit that his own state may be excepted from so general an exclusion; and if the statutes, which it is his duty to see faithfully executed, concede the principle for which we contend, he should acknowledge them, though he denies the laws and constitution of the *United States* as authority on the question. It will not be argued, that the statutes of *New York*, acknowledging the right of the master to his slave, are only giving effect to rights held under the laws of other states, or that there is any more obligation on a state under the constitution to regard the rights of private individuals than the demands of public justice; for the governor of *New York* denies,

in the whole scope of his argument, that the laws of one state can furnish the rule for another. If there is any obligation, independent of the constitution, resulting from the laws of other states, there is as much reason for the surrender of a fugitive from justice, charged with stealing a slave, as for that of a fugitive slave; and if the statute of *New York* provides for the surrender of a slave merely because he is the subject of property under our laws, why is there no force in our laws declaring it felony to steal a slave? The governor of *New York* acknowledges the obligation, under the constitution, to surrender the slave who has voluntarily escaped, but denies the right to demand the felon who may have stolen him. As the question of slavery, or the principle which recognizes one person as the property of another, is at least as strong, if not much stronger, in the former than in the latter case, the argument, on this point, resolves itself into the distinction between a private remedy, for restitution of property, and public justice, which seeks to punish the thief who steals that property. The right of property is admitted in one instance and denied in the other. The slave stolen is surrendered into bondage, while the thief is covered by the panoply of state sovereignty, because slavery is unknown to the laws of *New York*.

The governor of *New York* remarks, that this "is the old question which has agitated the country since the foundation of the constitution, concerning what has been surrendered by the states, and what has been retained. I must be permitted (he continues) to express, with all due deference, my belief that if this question had arisen in any case, not supposed to involve a peculiar interest of *Virginia*, that state would have been very unwilling to maintain a construction of the constitution which, if it is not altogether misunderstood on my part, is incompatible with the true dignity and sovereignty of the states." The doctrine of state sovereignty, as held in *Virginia*, is by no means incompatible with the idea, that states, as well as individuals, are bound by their compacts: on the contrary, it is when powers not granted to the federal government are exercised, or rights secured by the constitution, are withheld, that the inherent and inalienable rights of the states are resumed in their full force, for purposes of self-preservation against violations of their compact. If *Virginia* could believe that the power in question had not been granted; or that the constitution had been adopted by the states with a view to include all cases of "felony or crime," but that which in itself and its consequences was most dangerous to rights which she held in common with all the states but one, at the period of its adoption; if she had agreed to surrender her sovereign right to regulate and to protect her own domestic institutions; and had stipulated that the citizens of other states should be permitted and encouraged to depredate with impunity on her property, she would not, as she does not, now ask to impose any new obligation on *New York*. She only insists, that *New York*, as well as herself, shall be bound by the compact which exists between them. The principle of sovereignty does not exempt a state or a nation from the obligations of a treaty. How, then, can it excuse the violation of a constitution in which each state

has surrendered the power to treat with another. The governor of *New York* confounds the rights, as well as the uses of original or ultimate state sovereignty, with the expediency of arbitrary violations of a plain compact; and it is to be regretted that the sovereignty of so powerful a state as *New York* is invoked for the first time to extenuate theft, or to shield fugitives from justice.

It is not denied, as the governor of *New York* asserts, that there are "offences" for which a citizen would not be surrendered. It is singular, however, that the term "felony or other crime" used in the constitution, is qualified by the word "offences" in the attempt which is made to establish the principle that there may be exceptions to the general rule. The question continually recurs, whether the fact charged in this instance is within the rule prescribed by a competent and paramount authority; and this question, it is conceived, cannot be decided by reference to other cases which do not exist, and may never arise. The instances in which the governor of *New York* supposes that innocent or meritorious actions might be declared crimes, do not affect the argument in this case, unless it can be shewn that this is one of them, and like the illustrations of the plain letter of the constitution from supposed analogies of national law, they evince a misapprehension of the grounds on which this question has been rested, and imply a distrust of the justice, good faith, and general uniformity of the institutions and modes of trial in all the states. Is the refusal to surrender the fugitives in this case justified by the supposition that other cases might arise in which no demand would be made, or where a compliance would not be expected? If it is shewn that theft is a "felony or crime," and that stealing a slave is theft within the meaning of the constitution, I submit whether the case is not made out.

I do not understand the governor of *New York* as relying on any supposed deficiency in the mode of preferring the charge in this case: indeed, he could not now do so, after having in his correspondence with the lieutenant governor, distinctly waived all such objections, and professing his readiness to meet the broad question of his obligation to surrender the fugitives. Whether the slave in this case was removed "*animo furandi*" in the common law sense, or was "carried away" in the sense of our statute, for the purpose of emancipation, or for any other unlawful purpose, it is equally a crime under the laws of *Virginia*, and within the purview of the federal constitution.

It is said that in the view which has been taken of this question on the part of *Virginia*, the personal security of the citizen has been overlooked. It has been generally considered, in "all civilized countries," that the personal security of the citizen could not be more effectually protected than by the punishment of crime, nor more fatally exposed than by its impunity or encouragement. The personal inviolability of the felon is incompatible with the safety of society. This is true with regard to municipal laws, and laws regulating the intercourse of states or nations. The fugitives, in this instance, are demanded for trial; and does the governor of *New York* take it for granted they are guilty, or does he distrust the criminal justice of our

state? The constitution of the *United States* prescribes that "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed, and to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favour, and to have the assistance of counsel for his defence." The innocent, therefore, can have nothing to apprehend; and is it the security of the guilty alone which excites the governor's solicitude. Their impunity is the consequence of his doctrine, and are we to be told that this is paramount to the security of all the slaveholding states? Is it true that no slaveholding state can enact any valid penal law, or inflict any punishment in reference to the security of their property, unless such law and such punishment is recognized explicitly by the statutes of *New York*? If the necessary and usual intercourse is to be maintained between the states, the rule established by the constitution must be enforced, or some other must be adopted which will guard the slaveholding states from the consequences of the positions now assumed.

The governor of *New York* has taken great pains to shew that there is an irreconcileable repugnance between the condition and laws of the states holding slaves and those holding none. This is true, if his views are correct, or if the constitution to which we appeal shall no longer furnish the measure of our respective rights and obligations in regard to questions where collisions may arise. If the security of our domestic rights does really depend on the legislation of *New York*, or on the caprice of its governor, the delusion of our compact has been complete on our part. When we remember the persevering and systematic efforts which have been made by citizens of other states to excite prejudice against our institutions at home and abroad, and the right which has sometimes been asserted to control them, through the direct or indirect agencies of the federal government, the positions now maintained for the first time by the governor of a state are well calculated to command the attention of every American patriot. Hitherto, declarations of undisguised hostility to the rights and interests of the slaveholding states, have been made only by individuals or private associations; and however deeply we may have deplored their infatuation, or despised their impotent malice, they have not been deemed worthy of the resentment of a state. But when we are told, on the high authority of the governor of *New York*, that our rights of property are so imperfect as not to be the subject of theft; when it is broadly insinuated that they are obnoxious to the censure of the civilized world; when it is boldly proclaimed that we are under the ban of the constitution and of nations, it is time to vindicate the tenure by which, as a state, we hold our just and equal rank with states. It is in vain that we attempt to close our eyes against the evidence of designs in our own country and in *Europe*, to disturb rights which we claim as peculiarly and exclusively our own. I have received, under the frank of a member of congress from the state of *New York*, the proceedings of a meeting in *London*, composed partly of American

citizens, and styling themselves "The World's Convention," seeking, under the mask of universal emancipation, to regulate our domestic relations. It is believed that numerous societies, and several presses in the *United States*, are openly and actively co-operating in these designs of foreigners, and there is much reason to apprehend that they are encouraged and aided by some of the European governments.

If this work of universal emancipation is to go on, its advocates would be wise to look at home, and let their charities begin there. Let the first blow be struck for the freedom of the millions who now groan under the despotism of *Europe:* let the standard of equal rights be unfurled by those of our own countrymen, who, though they profess to pity the negro, of whose condition they are ignorant, make a beggar and a menial of the poor white man, and riot on the sweat of his brow. These agitators have yet to learn, that while we have borne their threats with patience, we have not been unmindful that the weapon, not of defence only, but of signal retaliation, was within our reach. The citizens of the southern states have forborne to agitate the elements of those societies whose citizens have claimed the right to interfere with ours; but here the white man at least is free; he is the equal of white men, the superior of slaves, and his sympathies with the oppressed white man in other states and other countries are stronger, more natural, and more just, than those of the abolitionist with the negro. The white men of *America* have already begun to enquire why it is that the clamorous advocates of negro emancipation are either members of the privileged and titled classes of *Europe*, or interested in perpetuating those distinctions in the *United States*, which draw the line of practical division in some parts of this country of equal rights, as plainly between the man who labours and the man who does not, as it is drawn by the stars and garters of monarchy. It is gratifying to believe, that these mischievous agitators constitute but an inconsiderable portion of any of those states whose domestic policy differs from our own; and that the body of our countrymen every where are still sensible that our mutual rights and safety depend on our mutual forbearance.

On the 12th February 1793, "the father of his country" approved the following act of congress, which was passed by men who were deeply imbued with the spirit which established our independence, and formed our Union. It is entitled "an act respecting fugitives from justice, and persons escaping from the service of their masters."

"§ 1. *Be it enacted, &c.* That whenever the executive authority of any state in the Union, or of either of the territories northwest or south of the river *Ohio*, shall demand any person as a fugitive from justice, of the executive authority of any such state or territory to which such person shall have fled, and shall moreover produce the copy of an indictment found, or an affidavit made before a magistrate of any state or territory as aforesaid, charging the person so demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the state or territory from whence the person so charged fled, it shall be the duty of the executive authority of the state or territory to which such person shall

have fled, to cause him or her to be arrested and secured, and notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear. But if no such agent shall appear within six months from the time of the arrest, the prisoner may be discharged; and all costs or expenses, incurred in the apprehending, securing and transmitting such fugitive to the state or territory making such demand, shall be paid by such state or territory.

"§ 2. That any agent, appointed as aforesaid, who shall receive the fugitive into his custody, shall be empowered to transport him or her to the state or territory from which he or she shall have fled. And if any person or persons shall, by force, set at liberty, or rescue the fugitive from such agent while transporting, as aforesaid, the person or persons so offending shall, on conviction, be fined not exceeding five hundred dollars, and be imprisoned not exceeding one year.

"§ 3. That when a person held to labour in any of the *United States*, or in either of the territories on the northwest or south of the river *Ohio*, under the laws thereof, shall escape into any other of the said states or territory, the person to whom such labour or service may be due, his agent or attorney, is hereby empowered to seize or arrest such fugitive from labour, and to take him or her before any judge of the circuit or district courts of the *United States*, residing or being within the state, or before any magistrate of a county, city or town corporate, wherein such seizure or arrest shall be made, and upon proof, to the satisfaction of such judge or magistrate, either by oral testimony or affidavit, taken before and certified by a magistrate of any such state or territory, that the person so seized or arrested doth, under the laws of the state or territory from which he or she fled, owe service or labour to the person claiming him or her, it shall be the duty of such judge or magistrate to give a certificate thereof to such claimant, his agent or attorney, which shall be sufficient warrant for removing the said fugitive from labour, to the state or territory from which he or she fled.

"§ 4. That any person who shall knowingly and willingly obstruct or hinder such claimant, his agent or attorney, in so seizing or arresting such fugitive from labour, or shall rescue such fugitive from such claimant, his agent or attorney, when so arrested, pursuant to the authority herein given or declared; or shall harbour or conceal such person, after notice, that he or she was a fugitive from labour, as aforesaid, shall, for either of the said offences, forfeit and pay the sum of five hundred dollars. Which penalty may be recovered by and for the benefit of such claimant, by action of debt, in any court proper to try the same; saving, moreover, to the person claiming such labour or service, his right of action for, or on account of, the said injuries, or either of them. [Approved, February 12, 1793.]"

It will be perceived that congress have provided in the case of the fugitive slave, that the demand of the owner may be made either before "any judge of the circuit or district courts of the *United States*, or before any magistrate" of the state where the arrest takes place;

and that in the case of the fugitive from justice, the demand is to be made only on the executive authority of the state to which he has fled. This act was passed under the expectation that the state authorities would not hesitate to carry its provisions into effect where a fugitive was properly demanded for any "felony or other crime," within the purview of the constitution. It has been considered, however, that a state officer is not bound to execute a law of congress, though he may do so if he thinks proper. While the governor of *New York*, therefore, was not bound to perform the duties enjoined by this act, he has admitted its obligation, and only denied its application to this case. By insisting, however, that he is not bound to surrender the fugitive, unless the crime charged is known to the laws of *New York*, he has as effectually defeated the operation of the act, as if he had denied its obligation. The principle that state officers are not bound to execute any special duty imposed by the laws of congress, results from the fact that the federal government has its own officers, judicial and ministerial, in each of the states, who are competent to execute all laws made in pursuance of the constitution. The constitution requires that the demand of a fugitive from justice, shall be made *by* the executive authority of the state whose laws have been violated, but does not require that it shall be made *on* any officer of the state to which he has fled. The language of the clauses of the constitution, in reference to fugitives from justice and fugitive slaves, is essentially the same. The only difference is, that in the case of the slave, it is provided that he shall not "be discharged from service or labour,"—"in consequence of any law or regulation" in the state to which he escapes. The governor of *New York* imagines that as these words are omitted in the provision concerning fugitives from justice, their use in the case of the slave implies in this case, a power in the state governments to defeat the object of the constitution by their own laws or regulations. If such had been the object of those who framed the constitution, it would not have been left to inference, and it could not have been expressed without publishing a paradox. If the governor's idea is correct, the clause under consideration should have been thus: "A person charged in any state with treason, felony or other crime, who shall flee from justice and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up to be removed to the state having jurisdiction of the crime:" *provided the laws of the state where he is found, or the universal laws of all civilized countries do not forbid it.*

The constitution and the act of 1793, both require that the fugitive shall be delivered up, and as the governor of *New York* has admitted that his duties are prescribed by these, and not by the laws of his own state, I am at a loss to perceive where he derives the right to decide that the fact charged is no crime within the meaning of the constitution, because it is not known as such to the laws of his state. While it is conceded that congress could not compel the governor of a state, or any other state officer, to execute its laws, suppose the act of 1793 had given the alternative of a demand on a federal judge or on a state officer, in this case as well as in the other, does the gover-

nor of *New York* contend that he would have been authorized to prevent the surrender of the fugitive by the judge? It has been decided by many of the state courts, that "laws or regulations" of the states designed to defeat or obstruct the recovery of a fugitive slave, were unconstitutional. The act of the *New York* legislature at its last session, to which I have adverted, entitled "an act to extend the right of trial by jury," is of this character; and though it attempts to render the recovery of a slave, except by its singular provisions, kidnapping, and punishable by imprisonment in the penitentiary for ten years, it is presumed that the remedy of the master is still complete before a judge of the federal court. It is worthy of remark that the words "shall be delivered up" are used in both clauses of the constitution in reference to fugitives from justice and runaway slaves. As the constitution thus clearly provides for the surrender in both cases, and does not point out the mode in which it shall be made in either, it cannot be doubted that congress may adopt such means as will be effectual to carry their power into effect.

The powers of the federal judiciary extend "to all cases, in law or equity, arising under the constitution, the laws of the *United States*, &c." and to controversies between a state as *plaintiff* and citizens of another state; and if it has been shewn that congress possess the power to cause the surrender of a fugitive from justice to be made, it is merely a question of expediency or policy whether this shall be done through the agency of the federal judges. It may be assumed as a general proposition that the personal rights of the citizen are more secure under the protection of an independent judiciary than under that of an executive officer. If we look only to the personal security of the fugitive from justice, when it is remembered that the judge who would decide on the demand for his surrender, would be a citizen of the same state as himself, it is not perceived why such an officer would be more likely to be the minister of injustice than the governor; and if we consider that the demand involves the rights of another state under the constitution, as well as the personal rights of the fugitive, it will not be questioned that the judge would be the most impartial and competent arbiter of the two. The power of the federal judiciary extends now to the property, the liberty and the life of the citizen of a state; and surely it may be trusted to decide on a demand of a fugitive from justice, the object of which is only to bring the offender to trial.

In order to shew that *Virginia* asks no more of her sister states than she is willing to do for them, I annex an extract from one of our statutes, enacted long since, prescribing the duties of our executive on this subject—"Whenever the executive authority of any state in the Union, or of any territory of the *United States*, shall demand of the executive of this commonwealth any person who shall have fled hither from any such state or territory, and shall moreover produce the copy of an indictment, or an affidavit, charging the person so demanded with having committed treason, felony or other crime, (such copy of the indictment, or such affidavit, being certified as authentic by the governor or chief magistrate of the state or territory from whence the

person so charged fled,) it shall be the duty of the executive of this commonwealth to cause such person to be arrested and secured, and notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive; and to cause such fugitive to be delivered to such agent if he shall appear within six months from the time of such arrest."

Unless similar acts shall be passed by the states generally, or unless a more correct rule shall be adopted in the construction of the act of congress in cases where demands shall be made for the surrender of fugitives charged with committing "felonies or crimes," in reference to the peculiar interests of the slaveholding states, it is obvious that congress must provide more effectual means for the surrender of such fugitives, by extending the power of the federal judiciary, or that the states will be driven to adopt measures of precaution and self-defence which must lead to unpleasant collisions, or to a total interruption of the relations now subsisting between them.

There are effectual measures of self-defence within our reach, but I do not think a resort to them at present necessary for our protection, or compatible with that mutual confidence which should be cherished by the states. As we claim no more than our compact of union so clearly guaranties to us, and as there is yet much reason to hope that the views of the governor of *New York* may not be sanctioned by the imposing authority of his state, it is due to ourselves, and to the relations which we bear to the Union, that we should not employ our own ample means of protection, until we have exhausted every effort to obtain a recognition of our just rights. It cannot be necessary to furnish an example, in order to satisfy the world that Virginians are animated by one feeling of devotion to their state. While this question is open to the influence of reason, it is more important to persuade our countrymen, that we are vindicating their rights, as well as our own, in maintaining the sacred bond of our union, and that, while we are ready to hazard every thing for its support, we are unwilling to doubt their fidelity to its principles. I forbear, therefore, to urge those measures on your consideration which will suggest themselves when the necessity arises for their adoption.

I would recommend the appointment of one or more special commissioners on behalf of this state for the purpose of bringing this question directly before the legislature of *New York*, and ascertaining whether that body concurs in the views of their governor, as to rights which the last legislature of *Virginia* declare we "cannot and will not, under any circumstances, surrender or abandon." When I remember the uniform correct decisions of the judiciary of *New York*, on this and similar questions, and the respect which has been manifested by the people and officers of that state for the constitution, I am reluctant to regard the indirect action of their last legislature as evidence of a concurrence, either in the views of the governor, or those of the committee to whom the proceedings of the last *Virginia* legislature were referred. It is due to the relations of perfect amity which have so long subsisted between *Virginia* and *New York*, besides the obligations which are due from each to the constitution, that we should

leave nothing to be inferred against ourselves, and nothing to be presumed as to the course of that state. I have no doubt of the cordial concurrence of the slaveholding states in the views which *Virginia* has taken of her rights, and of their readiness to co-operate with us in maintaining them. Indeed, I cannot believe that the non-slaveholding states will hesitate to appreciate and admit our conclusions. There have been several precedents, in our own history and in that of other states, for the course which I have suggested; and I am at a loss to conceive any other which is perfectly consistent with our own self-respect and our respect for the state of *New York*, and which, at the same time, affords as favourable an opportunity for deliberate reflection on the rights and duties involved in this question.

A direct application to congress, with a view to carry into effect the power which the constitution has conferred on the federal government, by enlarging the scope of the act of 1793, would only operate as a measure of precaution against the recurrence of similar questions hereafter. It is desirable that this question should be settled, if it is possible, by the states themselves, without appealing to those means which have been already agreed on, or to a convention, where the harmony which prevailed in 1787 might not exist again. We are content with the compact as it is. We have a perfect right to insist on its fair interpretation and its full execution; and if *New York* resists its authority, that state will be responsible in the eyes of nations and in the eye of God for the consequences.

The whole subject is submitted to you, in the fullest confidence that you will guard the rights and interests of the commonwealth with a deliberation and firmness worthy of the occasion.

THOMAS W. GILMER.

CORRESPONDENCE.

THE GOVERNOR OF VIRGINIA TO THE GOVERNOR OF NEW YORK.

STATE OF VIRGINIA.

EXECUTIVE DEPARTMENT,
April 6, 1840.

SIR,

The late governor of this commonwealth communicated to the general assembly during its recent session, the correspondence between this department and yourself, in reference to the refusal on your part, to surrender *Peter Johnson*, *Edward Smith* and *Isaac Gansey*, free persons of colour resident in the state of *New York*, who had been charged with the crime of theft, viz: stealing a slave, within the jurisdiction and against the laws of *Virginia*. The general assembly, after bestowing upon this subject the most deliberate consideration, under the influence of a just and necessary regard for the rights of this commonwealth, and of a perfect respect for the state of *New York*, adopted the following resolutions:

1. "*Resolved*, That the reasons assigned by the governor of *New York* for his refusal to surrender *Peter Johnson*, *Edward Smith* and *Isaac Gansey*, as fugitives from justice, upon the demand of the executive of this state, are wholly unsatisfactory; and that that refusal is a palpable and dangerous violation of the constitution and laws of the *United States*."

2. "*Resolved*, That the course pursued by the executive of *New York* cannot be acquiesced in, and if sanctioned by that state and persisted in, it will become the solemn duty of *Virginia* to adopt the most decisive and efficient measures for the protection of the property of her citizens, and the maintenance of rights, which she cannot, and will not, under any circumstances, surrender or abandon."

3. "*Resolved*, That the governor of this state be authorized and requested to renew his correspondence with the executive of *New York*, requesting that that functionary will review the grounds taken by him, and that he will urge the consideration of the subject upon the legislature" of his state.

4. "*Resolved*, That the governor of *Virginia* be requested to open a correspondence with the executive of each of the slaveholding states, requesting their co-operation in any necessary and proper measure of redress which *Virginia* may be forced to adopt."

5. "*Resolved*, That the governor of *Virginia* be requested to forward copies of these proceedings to the executive of each state of

this Union, with the request that they be laid before their respective legislatures."

The duties enjoined on this department by these resolutions of the general assembly, have devolved on me; and I have now the honour to communicate to your excellency copies of the proceedings referred to, and to request that they may be submitted to the legislature of *New York*.

In complying with the request of the general assembly, by renewing the correspondence between my predecessor and yourself, I beg leave to tender to your excellency the assurance that *Virginia* is sincerely desirous of terminating an unhappy controversy between states, which have not hitherto been insensible of their duties to each other and to the Union. You will perceive that the general assembly have expressed a desire that your excellency may be induced to review the grounds which you have assumed, in reference to the rights of this state. I hasten, therefore, to bring this subject to your consideration, indulging the hope that you will obviate the necessity of invoking the co-operation of the other slaveholding states, under the fourth resolution of the general assembly, by such an acknowledgment of the rights of *Virginia*, on your part, as will restore perfect harmony to our relations, and re-establish the principles of the constitution.

Your former correspondence with the lieutenant governor of this commonwealth, leaves me no reason to doubt your entire willingness to approach this subject and review it, in that spirit of candour and caution, which is due to the interests involved; and I feel assured that you will properly appreciate the desire of the general assembly for its prompt and satisfactory adjustment. The correspondence of my predecessor has placed this question, I respectfully apprehend, on the unequivocal principles and explicit provisions of the federal constitution; and I submit, with all deference, whether your excellency has met the argument on this point, by combating the hypothetical illustrations and analogies from the general principles of international law, to which my predecessor has referred. In your communication of September 16th, 1839, you say—"The true question is whether the state of which they (the fugitives) are citizens, is under a constitutional obligation to surrender its citizens to be carried to the offended state, and there tried for offences unknown to the laws of their own state." As you admit this to be the question, I am at a loss to perceive the force or application of your arguments and inferences from the laws of nations, and I only desire to advert to these arguments in order to bring our correspondence back to the narrow limits of which the constitutional question is susceptible. The positions you have assumed would lead certainly to your conclusions, that the states of our Union have fatally impaired their original rights by adopting the federal constitution, without preserving any adequate means for the adjustment of questions which must necessarily arise between them. If the correlative rights and duties of the states of the Union are to be determined only by reference to the vague principles of international law, having surrendered the powers which they once possessed of declaring war and making treaties, they have deprived themselves of

the only sanctions by which their rights can be protected, or their wrongs redressed. They have effectually yielded the substance, and retained only the shadow of that sovereignty which your excellency so readily concedes to them.

You endeavour to shew, that the constitution which created the Union, does no more than recognize and establish the principles of national law as applicable to separate and independent nations. In other words, that the relations between the states are unchanged, remaining the same under the constitution that those of the different European states now are. These general principles of the law of nations to which you refer, only apply in cases where no treaty intervenes to define and guard the rights of the contracting parties with stipulated precision. Where a treaty exists, it supersedes these general principles, which are only imperfectly established by the comity and acquiescence of nations. It becomes the special law for the case and the parties. It confers rights and imposes obligations which did not exist before. If we recur, however, in our imaginations, to the antiquity which your argument supposes, and resolve this question into the elementary principles of laws binding on nations, it cannot be doubted that a treaty on this subject between *New York* and *Virginia* in the words of the constitution, would impose on your state the obligation of fulfilling its stipulations by the surrender of these fugitives. If such treaty had been made in 1787, and had declared that "a person charged in *one* state with treason, felony, or other crime, who shall flee from justice and be found in *the other* state, shall, on demand of the executive authority of the state from which he fled, be delivered up to be removed to the state having jurisdiction of the crime," could your excellency doubt that *New York* would be bound to comply with her solemn compact, or that her refusal would justify *Virginia* in resorting to those violent remedies, to which alone, under the principles you urge, nations can appeal. Is this provision of the constitution less obligatory upon *New York*, or less beneficial to *Virginia*, because, instead of being a compact between two states, it is one, to the faithful observance of which, six and twenty states have pledged themselves?

Your position is, that there is no obligation to surrender the fugitive, unless the crime with which he is charged, is recognized by the state in which he has taken refuge, and upon which the demand is made. In your communication of October 24, 1839, you quote *Grotius*, as admitting "that for some ages past, the right of demanding fugitive delinquents, has not been insisted on in most parts of *Europe*, except in crimes against the state, or those of a very heinous nature." Who is to decide under your view of the subject, whether the crime is against the state, or of a very heinous nature? Would you refer that question to a foreign forum? or to the jurisdiction which has rightfully defined the offence and prescribed the punishment? It will not be denied that each government has the sole right to define and punish treason against itself, yet your argument would transfer to every other government a right to entertain a sort of appellate or concurrent jurisdiction. If the doctrines of *Vattel* and *Grotius*, could supersede the plain letter

of the constitution in this case, they would establish, under your interpretation, a very inconvenient and totally impracticable rule. In order to carry out the principle for which you contend, it would be necessary to assimilate the criminal code of all nations, to define the same crimes, to prescribe the same punishments in each, before either would be bound to surrender a fugitive on the demand of another. The punishment is an essential incident, and may be regarded as part of the offence; so that the punishment as well as the crime, must be the same to justify the surrender on your principles. The crime of treason could not well be punished, unless there was also a uniformity in the forms of all governments; since the republic could very plausibly refuse to surrender the refugee from a monarchy, because being charged with meditating to rebel against, or murder the king, and there being no king known in a republic, he is charged with an offence not recognized by the government to which he has fled; and the ministers of a crown could retort your argument, by denying that treason can be committed against the people.

Can your excellency suppose that the state of *New York* is bound by no stronger or more definite obligations in this case, than would exist if the demand had been made through the proper channel by *England* or *Russia?* Have the states adopted the constitution only to invite aggressions on their rights? I think, with all deference, that the view which your excellency has taken of this subject, would subvert the whole scope and design of the constitution, reversing the positions of the states totally, rendering them aliens and enemies, where that instrument designed to establish the closest and most intimate relations, and consolidating them as to these separate, distinct and delicate municipal interests, where contact and interference must result in mutual discord and danger. The state of *Virginia* has always manifested an anxious solicitude to observe the true spirit of the constitution, by a strict adherence to its plain letter or obvious intent, and I am persuaded that your excellency has observed that our happy union can be perpetuated, and its incalculable blessings enjoyed, only by a scrupulous regard on the part of the states, for their own rights and the rights of others.

In your communication of October 24, 1839, you observe, in reference to the usage among the *Swiss Cantons*, cited from *Vattel*, as an illustration by my predecessor, "The name of letters Rogatory, and the remark that this is an admirable institution, and that it is in force throughout all *Switzerland*, are sufficient to shew, without other proof, that the usage or practice here described by the learned author, is not an enlargement of the law of nations, but that it is a municipal institution established by the contract of federation between the *Swiss Cantons*, and that the law of nations is thus superseded by a written law, or as we should describe it, a constitution." Does your excellency lose sight of the fact, that there is "a written law, or as we should describe it, a constitution," in the *United States?* Or is our "written law or constitution" less binding on the states, than the contract of federation between the *Swiss Cantons?* When the constitution was under discussion in the state conventions, its advocates fre-

quently attempted to recommend its adoption, by favourable comparisons which they instituted between the union which it would create, and the clumsy leagues, both ancient and modern, which had so often failed to effect their ends. The reasons which your excellency now urges, are better calculated, I am constrained to think, to shew why this constitution ought not to have been adopted, than to elude the force of its provisions at this time. You insist that the obligation of one state to surrender fugitives from justice on the demand of another, under the second section of the fourth article of the constitution, though that section "is comprehensive enough to embrace all criminal offences, and to reach all fugitives from justice, must be restricted and interpreted as to include *only such offences as are recognized as crimes* by the universal law of all civilized countries." I would recall your attention to the language of this section. It is in the following words:—"A person charged in any state with treason, felony or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime." Your excellency destroys the effect of this provision entirely, when you insist that the state of which the demand is made, shall "have jurisdiction of the crime," and that the fugitive is not to be delivered, unless the offence with which he is charged, is "recognized as a crime by the universal law of all civilized countries." It would be exceedingly difficult, I apprehend, for you or me to define what the "universal law of all civilized countries" is. Though we might agree in our line of discrimination between civilized and barbarous countries, yet we should find that even in christendom, very wide diversities exist as to all laws. I think that if the interpretation which you apply to the constitution, had been intended by its framers, they would have employed language more significant to warrant it. Had they understood themselves as you profess to understand them, they would have said "a person charged in any state with treason, felony or other crime, [recognized as such by the universal law of all civilized countries,] who shall flee from justice and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up to be removed to the state having jurisdiction of the crime."

You are aware, that there are domestic interests of a peculiarly delicate nature involved in this question, and I cannot permit myself to doubt, that your excellency, and the enlightened state over which you preside, will be prompt to enforce the solemn compact of our Union, with the same sense of justice and comprehensive patriotism, which so eminently distinguished the convention and the states in 1787. If the American states were restrained by no stronger motives of respect and forbearance towards each other than are recognized by the comity of nations, these should be regarded as sufficient to forbid any attempt to control or interfere with those purely municipal rights, which cannot be brought into discussion, without impairing the sovereignty of each state and hazarding the peace of all. The considerations which you have urged, if they could now be regarded as

open for discussion between the states, might not be met at this time, on either side, with the same spirit of caution and concession, which so happily and so conclusively terminated the deliberations of 1787; and established a constitution which was deemed adequate to guarantee to each state the undisturbed enjoyment of all its own rights. The history of *Virginia* prior and subsequent to that period, abundantly manifests an inflexible devotion to the great objects of the Union. This commonwealth has never desired to recall any of the great sacrifices which it has made, to ensure the greatest amount of social security and prosperity to all the states. *Virginia* is content with the constitution as it is; but while she acknowledges its obligations on her part, she has a right to insist that they shall also be acknowledged by others.

This state cannot now admit the right of *New York*, or any other state, to call in question either the legality or policy of those domestic institutions, which existed here and in all the states (with a single exception) when the present federal compact was solemnly ratified. The fact that similar institutions then existed in the state of *New York*, while it does not strengthen the obligations of your state to regard its own compact, furnishes, I respectfully submit, an additional reason why its authorities should not withhold, from other states, that justice and forbearance, the necessity of which has been so recently demonstrated by its own example. The state of *New York* has thought proper, since the adoption of the federal constitution, to change her own domestic relations. Her right to do so, has never been questioned by *Virginia*, though, with perfect deference, I am unable to perceive, why *Virginia* would not be justified to the same extent, in insisting that the domestic institutions of *New York* should continue as they were in 1787, that *New York* can be, when she urges the fact that our domestic institutions have undergone no change, as a reason why she should withhold justice from us. *Virginia* readily concedes to the other states all that she asks for herself, the perfect and exclusive right to regulate her own domestic affairs in her own way.

But without reference to any extraneous considerations, I propose to bring this question at once to the test of the constitution. I insist, that the case under review is clearly and unequivocally provided for by that instrument, and that *Virginia* has a right to claim, and *New York* is bound to acknowledge, that this provision is the paramount law. I am happy in having it in my power, on this point, to adduce the most abundant and conclusive authorities, some of which, I am sure, your excellency will take pleasure in regarding with that entire respect to which they are unquestionably entitled.

The second section of the fourth article of the constitution contains in juxtaposition, the provision which has been already quoted, in reference to this particular subject, and the following: "No person held to service or labour in one state under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labour, but shall be delivered up on claim of the party to whom such service or labour may be due." If

a slave shall escape from his owner in *Virginia* to *New York*, does your excellency doubt the right of the owner to arrest him there, or the obligation of your state to respect this provision of the constitution? Would you require that "the party to whom such service or labour is due" should sustain his demand for his property by "the universal law of all civilized countries?" In 1793, soon after the adoption of the constitution, congress passed an act providing specific means for the apprehension of fugitive slaves, and for the surrender of fugitives from justice. Thus we find the two cases contemplated in the same immediate connexion by the constitution, and by the act of congress which passed a short time after. The jurors, magistrates, judges and almost every functionary of your state have repeatedly sustained the constitutional right of the master to apprehend and recover his slave within your jurisdiction. I beg leave to call the attention of your excellency particularly to the case of *Jack* vs. *Martin*, occurring in your own state, and reported in 12 *Wendell* 311. In this case the constitutionality of the act of congress of 1793, and of a statute of the state of *New York*, allowing the writ *de homine replegiando* to be sued out by a slave against the person apprehending him, was brought directly in question before your courts, and the rights of the master were sustained, first by your supreme court, and in the next year by the unanimous decision of your court of errors, and it was settled that neither your legislature nor judiciary had any constitutional right to hinder or prevent the citizen of another state from recapturing his slave. I annex an extract from the opinion of your supreme court, as delivered by judge *Nelson*. "To ascertain which is entitled to paramount authority (the act of congress or the act of your state), we must go back to the source of power, the provision of the constitution; that being conceded to be supreme, and any law in pursuance thereof controlling. The first clause is merely prohibitory upon the states, and forbids the enactment of any law, or the adoption of any regulation, in the case of a fugitive slave, by which he may be discharged from the service of his master; and this prohibition upon the state power thus far, is unqualified and complete, as it necessarily includes a restriction against any measure tending, in the slightest degree, to impair the right to such service. No law or regulation of a state being permitted to discharge it, the claim or title of the owner remains as perfect within the jurisdiction of the state to which the fugitive has fled, after his arrival, and during his continuance, as it was in and under the laws of the state from which he escaped. The service there due, and the escape being established, so explicit are the terms of the constitution, no rightful authority can be exercised by the state to vary the relation existing between the parties. To this very qualified extent, slavery may be said still to exist in a state, however effectually it may have been denounced by her constitution and laws." I am unable to discover why your excellency should refuse to surrender fugitives from justice, who are charged with stealing a slave, when the obligation to surrender the slave himself is so emphatically sustained by the high-

est judicial authorities of your state. The same positions have been repeatedly established by the most respectable courts of other states.

The authority of the highest judicial decisions in *New York* and other states can be cited also as to the obligation to surrender fugitives from justice. I will content myself with inviting your excellency's attention to the case of *Clark*, a fugitive from the state of *Rhode Island*, decided in your supreme court. In this case it was assumed that no "crime" had been committed, or was in fact imputed to the fugitive, inasmuch as the offence charged upon him would only warrant proceedings of a civil nature in his own state. Chief justice *Savage*, in delivering the opinion of the court, says—"The first answer is that the statute of *Rhode Island* is not properly before us. An offence of a highly immoral character is stated in the warrant, and is certified by the governor of *Rhode Island* to have been made criminal by the laws of that state. This is evidence enough in this stage of the proceedings." He proceeds again thus—"Had our constitution and laws been silent on this subject, and no conventional arrangement existed between the several states composing our confederacy, it may be conceded that the practice arising from the comity of nations would be applicable, and before we would surrender in one state any person demanded by another as a fugitive from justice, it would be our duty to examine into the evidence of the alleged crime, and be satisfied, that no reasonable doubt existed as to his guilt. But under our federal government this matter has been regulated, and we are not left to the uncertainty arising from an enquiry in one state into the particulars of an offence committed in another. Here, then, (the federal constitution,) is the law on the subject—a positive regulation, and tantamount to a treaty stipulation, and we are not to resort to the comity of nations for our guidance. Every person who is *charged* with a crime in any state, and shall flee into another, shall be delivered up."

Your excellency will thus perceive, that the positions which I have assumed, have been sustained by the highest judicial tribunals of your state. The question to which I again most respectfully solicit your attention is one that does not seem to me to admit of doubt or debate, if we regard it in the only aspect in which it should be considered, as one arising between two states, both of which have sanctioned, and are certainly bound by the federal constitution. If that constitution is admitted to contain the provision which has been cited, and it is conceded that "the constitution, and the laws of the *United States* which shall be made in pursuance thereof, (are) the supreme law" of our Union, and the state of *New York*, as a member of this Union, still acknowledges the authority of our compact, I am at a loss to conceive how she can be absolved from her solemn obligations without a compliance with the requisition of *Virginia*.

With assurances of the utmost respect and consideration,

THOMAS W. GILMER.

To his Excellency William H. Seward,
Governor of the State of New York.

THE GOVERNOR OF NEW YORK TO THE GOVERNOR OF VIRGINIA.

ALBANY, April 18th, 1840.

SIR,

I acknowledge the receipt of your communication of the 6th instant. It has seemed to be my duty to submit the same to the legislature. I send you a copy of my message on that occasion. My answer will necessarily be delayed until after the adjournment of the legislature.

In the mean time, I pray you to accept the assurance of my very high respect.

Your obedient servant,

WILLIAM H. SEWARD.

His Excellency THOMAS W. GILMER, *Richmond.*

STATE OF NEW YORK.

IN SENATE, April 11, 1840.

MESSAGE

From the Governor, transmitting a communication from the Governor of Virginia, and Proceedings of the Legislature of that State, in relation to certain alleged fugitives from justice.

EXECUTIVE CHAMBER,
Albany, April 11th, 1840.

TO THE LEGISLATURE.

I transmit a communication from the governor of *Virginia*, containing the proceedings of the legislature of that state, concerning the requisition heretofore made upon me for the delivery of *Peter Johnson*, *Edward Smith*, and *Isaac Gansey*, as fugitives from justice.

I observed, in my annual message, that the subject was one which fell within the province of the executive department, and that the duties of that department were enjoined by the constitution and laws of the *United States*, and not by the constitution or laws of this state; yet that the respect I entertained for the executive of *Virginia*, and the deference I owed to the legislature of this state, induced me to lay before you the correspondence which had taken place on this subject. The proceedings of the general assembly of *Virginia* manifest a desire to obtain the sense of the legislature on the subject. I therefore commend the proceedings of the general assembly, and the communication of the governor of *Virginia*, to your respectful consideration, and shall defer my reply, in the hope that I may be aided by the superior wisdom of the legislative department. Altogether willing that the opinion of the executive and of the general assembly of

Virginia may be considered under the most favourable auspices, and that my own may be subjected to the most rigid examination, I transmit herewith a report of a committee of the general assembly of *Virginia*, in which the subject is ably discussed.

WILLIAM H. SEWARD.

THE GOVERNOR OF VIRGINIA TO THE GOVERNOR OF NEW YORK.

EXECUTIVE DEPARTMENT,
June 6th, 1840.

SIR,

I have the honour to acknowledge your communication of the 18th April, accompanied by a copy of your excellency's message of the 11th April, submitting my note of the 6th April to the legislature of *New York*. You inform me that your excellency's answer to my communication "will be necessarily delayed until after the adjournment of the legislature." As some time has elapsed since the legislature of your state is reported to have adjourned, I beg leave, most respectfully, to recall your excellency's attention to the subject of my former communication, and to repeat the earnest hope that your excellency's answer may prevent the necessity for any further effort on the part of *Virginia*, to obtain the recognition of rights which are conceived to be so clearly established by the constitution of our Union, and so essential to the harmony of the states, which I doubt not your excellency is anxious to preserve unimpaired.

I have the honour to remain,

With sentiments of the highest respect, &c.,

Your obedient servant,

THOMAS W. GILMER.

To his Excellency WILLIAM H. SEWARD,
Governor of New York, Albany.

THE GOVERNOR OF VIRGINIA TO THE GOVERNOR OF NEW YORK.

EXECUTIVE DEPARTMENT,
July 13th, 1840.

SIR,

I had the honour, on the 6th ultimo, to address your excellency on the subject of the correspondence pending between this department and the executive of *New York*, in reference to the surrender of three free negroes, charged with stealing a slave, the property of a citizen of this state; and I would again most respectfully solicit your

excellency's attention to the duties assigned me by the legislature of this commonwealth. I cannot forbear again to express the hope, that this question will be satisfactorily determined in the mode so clearly indicated by the constitution of the *United States;* and that your excellency will restore those relations which so long existed between our states, and which could not be interrupted without painful regret to the citizens of both.

I beg to renew to your excellency, the assurance of the distinguished consideration with which

I am, your obedient servant,

THOMAS W. GILMER.

To his Excellency WILLIAM H. SEWARD,
Governor of New York.

THE GOVERNOR OF NEW YORK TO THE GOVERNOR OF VIRGINIA.

AUBURN, July 18th, 1840.

SIR,

Your letter of the 13th instant, addressed to me at *Albany*, has been received at this place, where I am spending some time, with a view to the restoration of my health, somewhat impaired by the confinement and occupation incident to the session of the legislature.

I hope to be able to bestow due consideration upon the subject of our correspondence very soon. In the mean time, with assurances of the highest respect,

I remain, your excellency's

Obedient servant,

WILLIAM H. SEWARD.

His Excellency THOMAS W. GILMER.

THE GOVERNOR OF VIRGINIA TO THE GOVERNOR OF NEW YORK.

EXECUTIVE DEPARTMENT,
August 14th, 1840.

SIR,

I have the honour to acknowledge your excellency's communication of the 18th ultimo, acknowledging mine of the 13th July 1840, in which you say, that you "hope to be able to bestow due consideration upon the subject of our correspondence very soon."

I hope your excellency's health has been entirely restored, and I beg to renew the assurance of the distinguished consideration with which

I remain,

Your excellency's

Most obedient servant,

THOMAS W. GILMER.

To his Excellency WILLIAM H. SEWARD,
Governor of New York.

THE GOVERNOR OF VIRGINIA TO THE GOVERNOR OF NEW YORK.

EXECUTIVE DEPARTMENT,
September 18th, 1840.

SIR,

I had the honour to address your excellency on the 14th ultimo, acknowledging the receipt of your note of July 18th, and as no answer has reached me, I am induced to apprehend that some untoward accident has prevented the receipt of your communication or mine. I deem it necessary to advise your excellency of the necessity of bringing our correspondence to a close. I have postponed the execution of the duty assigned me under the 4th resolution of our general assembly, indulging the hope that your excellency would render it unnecessary for me "to request the co-operation of the slaveholding states." Your excellency must be aware that the question now pending between our states, and yet within their control, may assume a very different aspect, should it become the subject of discussion or action with the states generally. I am reluctant to believe that *Virginia* can appeal in vain to the justice of *New York*, on a subject of such vital moment to the interests of all the states. I have determined not to close this question if it could be avoided on our part, nor to present any obstacle to its calm and deliberate consideration, by opening a correspondence with the other slaveholding states, while a hope remained that your excellency could be induced to acknowledge the right which is conceived to be so clearly guaranteed to all the states by the constitution. As the time is approaching when the legislatures of the states will convene, I am not at liberty much longer to defer a compliance with the fourth resolution of our general assembly. I cannot do so, however, without again soliciting your excellency's most serious attention to the demand which has been made by the state of *Virginia* on the executive of *New York*. I occupy with regard to this demand, a position very different from your excellency's, and one which leaves me far less latitude of discretion than your excellency is at liberty to exercise. With you, it is emphatically and exclusively an executive question, entirely within the control of your own official

judgment, as the legislature of your state has not thought proper to act upon it, or to influence your conduct in relation to its adjustment. The distinct and decisive resolutions of the legislature of this state, which I long since had the honour to communicate to you, and which you laid before your own legislature at its last session, have constituted me the mere organ of executing the deliberate purposes of *Virginia*. The position which your excellency has assumed in relation to this subject, is in advance (I will not say in opposition) to the sentiment of your state. It may be changed with honour to yourself, and with the happiest consequences to our country. Hence the hope was confidently indulged by our state, that in your zeal to vindicate what you supposed to be the rights of three free negroes, who sought in your state a temporary refuge from the consequences of their crime here, you would not finally and totally disregard that justice and security which are due to the people of *Virginia* under the constitution. It is the state of *Virginia* which now appeals to the governor of *New York;* and I am persuaded that your excellency will perceive how important it is, in reference to the relations of our own states merely, that such a question should be settled before it is litigated between the states and the people, respectively, of *New York* and *Virginia*. It were not proper in me to conjecture what would be the judgment of *New York* now on this subject. Your excellency has been referred to the repeated decisions of the judicial tribunals of your state, and your legislature has declined to repudiate or question these. I would ask, then, in a case which seems to me so perfectly clear—one which (to say the least) your excellency must regard as exceedingly doubtful, and a case which involves such vital consequences to our country, whether your excellency will not consent that *New York* and *Virginia* may justify the confidence which has been reposed in their patriotic regard for the constitution, and exhibit on this occasion an example worthy of their position in our family of states, and calculated to impart new vigour to our happy Union. I trust that it may be so. But at all events, I hope your excellency will excuse me for expecting your immediate attention to this subject.

I have the honour to be,

With the highest consideration,

Your excellency's most obedient, &c.

THOMAS W. GILMER.

His Excellency WILLIAM H. SEWARD,
Governor of New York.

THE GOVERNOR OF NEW YORK TO THE GOVERNOR OF VIRGINIA.

ALBANY, September 28th, 1840.

DEAR SIR,

Your letter of the 18th inst. has been received. I have prepared my reply to the communication of your excellency on the subject of the demand of certain fugitives from justice, and shall transmit the same, as soon as it can be copied for that purpose. With many thanks for your long forbearance,

I am, very respectfully,

Your obedient servant,

WILLIAM H. SEWARD.

His Excellency THOMAS W. GILMER,
Governor of Virginia.

THE GOVERNOR OF VIRGINIA TO THE GOVERNOR OF NEW YORK.

EXECUTIVE DEPARTMENT,
October 22d, 1840.

SIR,

I have the honour to acknowledge your letter of the 28th September, in which you say "I have prepared my reply to the communication of your excellency on the subject of the demand of certain fugitives from justice, and shall transmit the same, as soon as it shall be copied for that purpose." I shall be gratified to hear from your excellency as soon as your reply can be copied; and from the delay which has occurred, I feel warranted in the anticipation that your excellency's reply, when it is received, will save me the painful necessity of farther correspondence with the other states.

With considerations of the highest respect, &c. &c.

I am your ob't serv't,

THOMAS W. GILMER.

To his Excellency WILLIAM H. SEWARD,
Governor of New York.

THE GOVERNOR OF VIRGINIA TO THE GOVERNOR OF NEW YORK.

EXECUTIVE DEPARTMENT,
November 5th, 1840.

SIR,

I regret very much the necessity of troubling your excellency again on the subject of our correspondence; but if you will advert to its progress and objects, you cannot fail to acquit me of any desire to precipitate your excellency's judgment on the grave questions which are involved. Seven months have elapsed since I had the honour to communicate the preamble and resolutions adopted by the legislature of *Virginia*, and to invite your excellency's earnest attention to the subject. I have received repeated assurances of your readiness to comply with this request; and on the 28th of September, you informed me that your reply to my communication of April last, had been prepared, and remained only to be copied. I informed you, on the 22d October, that your reply had not been received, and I am still awaiting it. I have forborne to execute the request contained in the fourth resolution of the *Virginia* legislature until the last moment, because I was unwilling to take it for granted, that any department or any officer of the government of a sister state would persist in adhering, deliberately, to the dangerous construction of our federal compact, which your excellency had assumed in your former correspondence. Your excellency has been pleased to acknowledge this forbearance in very respectful terms; and I trust, after reminding you that the legislatures of several of the states are already in session, it will not be deemed an act of impatience on my part to enquire whether the copy of your excellency's reply has been completed.

I beg leave, before our correspondence on this subject is concluded, to correct an error into which your excellency has been misled, in reference to the view which you suppose *Virginia* to have taken in anticipation of any ultimate consequences which may result from your refusal to recognize the laws of congress, made in pursuance of the constitution, as of paramount authority in your state. In your last annual message you state, in reference to this question, that "the subject is one which appertains to the executive department." That "the duties of that (your) department in such cases are prescribed by the constitution of the *United States*, and not by the constitution or laws of this (your) state." You also express your "sincere regret that a construction of the constitution manifestly necessary to maintain the sovereignty of this (your) state, and the personal rights of her citizens, should be regarded by the executive of *Virginia*, as justifying in any contingency, a menace of secession from the Union." You will be satisfied, I am persuaded, on a review of your position, and the effect which it must have on the relations of *New York* to the Union, that you have done injustice to my predecessor, in ascribing to him any such menace in his last annual message. It has been distinctly assumed, on the part of *Virginia*, that the obligations imposed by the federal constitution on the states, in reference to the surrender of fugitive slaves and fugitives from justice, charged with having

stolen slaves, were imperative and binding on *New York*, when the demand was constitutionally and legally made. Your excellency has conceded, that in this case the demand has been regularly made, and that your official duties in reference to it have been "prescribed by the constitution of the *United States*, and not by the constitution or laws of your state;" and yet you have declined to surrender the fugitives, because they are not charged in *Virginia* with an offence recognized as a crime "by the statute laws of *New York*, or by the universal laws of mankind." Our Union has been created by a constitution which confers certain relative rights, and imposes certain positive obligations, on all the states; and your excellency refuses to recognize these rights on the part of *Virginia*, or to discharge these obligations on the part of *New York*. I submit then, with deference, whether the menace of secession can be ascribed to *Virginia*, when she appeals to one of her co-states to enforce the authority of the constitution as a compact binding on all, or whether the course of your excellency, if persisted in, does not virtually withdraw the state of *New York* from the obligations of the Union, or nullify what you admit to be a constitutional law of congress, while you claim for your state and for yourself an equal participation in all the benefits resulting to the states and their citizens from our federal relations. I am at a loss to conceive how your excellency can suppose that *Virginia*, or any slaveholding state, should meditate secession from the Union because the governor of *New York* thinks proper to place his own state in this condition. The present enquiry is not what *Virginia* may be driven by necessity to do, but whether *New York* will persist in refusing to acknowledge and perform her duties under the constitution as a member of the Union. I am not disposed to look to any state of things which implies the deliberate purpose on the part of *New York*, or on your part, to set the laws, the constitution and the Union at defiance.

Your excellency's reply will be expected until the 15th instant.

I have the honour to be, with distinguished consideration, &c.,

Your ob't serv't,

THOMAS W. GILMER.

To his Excellency WILLIAM H. SEWARD,
Governor of New York.

THE GOVERNOR OF NEW YORK TO THE GOVERNOR OF VIRGINIA.

STATE OF NEW YORK.

EXECUTIVE DEPARTMENT,
Albany, November 9th, 1840.

SIR,

I have heretofore acknowledged the receipt of your communication of the 6th of April last, on the subject of the requisition for the surrender of *Peter Johnson*, *Edward Smith* and *Isaac Gansey*, alleged to be citizens of this state, and charged with the offence of stealing a slave within the jurisdiction of *Virginia*. The communication was accompanied by a report of a committee of the house of delegates of *Virginia*, and the following resolutions of the general assembly:

"*Resolved*, That the reasons assigned by the governor of *New York*, for his refusal to surrender *Peter Johnson*, *Edward Smith* and *Isaac Gansey*, as fugitives from justice, upon the demand of this state, are wholly unsatisfactory, and that that refusal is a palpable and dangerous violation of the constitution and laws of the *United States*.

"*Resolved*, That the course pursued by the executive of *New York* cannot be acquiesced in, and if sanctioned by that state and persisted in, it will become the solemn duty of *Virginia* to adopt the most decisive and efficient measures for the protection of the property of her citizens, and the maintenance of rights which she cannot and will not, under any circumstances, surrender or abandon.

"*Resolved*, That the governor of this state be authorized and requested to renew his correspondence with the executive of *New York*, requesting that that functionary will review the grounds taken by him, and that he will urge the consideration of the subject upon the legislature of his state.

"*Resolved*, That the governor of *Virginia* be requested to open a correspondence with the executive of each of the slaveholding states, requesting their co-operation in any necessary and proper measures of redress, which *Virginia* may be forced to adopt.

"*Resolved*, That the governor of *Virginia* be requested to forward copies of these proceedings to the executive of each state of this Union, with a request that they be laid before their respective legislatures."

In compliance with the request of the general assembly of *Virginia*, I immediately transmitted to the legislature of this state, your excellency's letter and the very able report of the committee of the house of delegates of *Virginia*, with the following message:

"EXECUTIVE CHAMBER,
Albany, April 11th, 1840.

"*To the Legislature:*

"I transmit a communication from the governor of *Virginia*, containing the proceedings of the legislature of that state,

concerning the requisition heretofore made upon me, for the delivery of *Peter Johnson*, *Edward Smith* and *Isaac Gansey*, as fugitives from justice. I observed, in my annual message, that the subject was one which fell within the province of the executive department, and that the duties of that department were enjoined by the constitution and laws of the *United States*, and not by the constitution and laws of this state, yet that the respect I entertained for the executive of *Virginia*, and the deference I owed to the legislature of this state, induced me to lay before you the correspondence which had taken place on this subject. The proceedings of the general assembly of *Virginia* manifest a desire to obtain the sense of the legislature on the subject. I therefore commend the proceedings of the general assembly, and the communication of the governor of *Virginia*, to your respectful consideration, and shall defer my reply in the hope, that I may be aided by the superior wisdom of the legislative department. Altogether willing, that the opinions of the executive, and of the general assembly of *Virginia*, may be considered under the most favourable auspices, and that my own may be subjected to the most rigid examination, I transmit herewith a report of a committee of the general assembly of *Virginia*, in which the subject is ably discussed.

WILLIAM H. SEWARD."

No action was had on the subject in the senate. It was referred to a committee in the house of assembly. That committee on the 14th of May made the following report:

"*Mr. Simmons*, from the committee on the judiciary, to which was referred the message of the governor, transmitting the correspondence between him and the governor of the state of *Virginia*, on the subject of the delivery of certain citizens alleged to be fugitives from justice, reports, that by the constitution and laws, the power of causing the arrest of persons demanded as fugitives from justice, is vested in the executive, and his discretion in delivering up such persons, cannot be controlled by any legislative action. Still on a subject of such moment, in which the feelings, if not the interests of a sister state, are involved, the governor of this state evinced a proper regard for those feelings, and a just deference to public sentiment, in submitting to the legislature the whole correspondence that had taken place between him and the executive of *Virginia*. On a careful examination of that correspondence, your committee cannot discover any occasion for the interposition of this house, even by way of advice. They believe the positions taken by the governor of this state, to be sound and judicious, and that his exposition of the meaning of the constitutional provision in question, is the only one that can be given consistently with the sovereignty of the state and the rights of the citizens, while it is in strict conformity with our federal obligations to other states, and recognizes all the rights which are intended to be secured.

"The committee content themselves with the expression of their general concurrence in the views presented by the governor, because

the subject is one which cannot be expressed with brevity, and because it has been examined and illustrated with distinguished ability. Conceiving that there is no occasion to submit any proposition to the house for its action, your committee ask to be discharged from the further consideration of the subject."

The committee was thereupon discharged. I regret that I am left without legislative advice, to perform the duty of reviewing the grounds of my decision, in compliance with the wish expressed by the general assembly of *Virginia*. You have, however, rightly anticipated that that duty will be discharged in a spirit of candour, and with an earnest desire to maintain the harmony which has heretofore existed between the people of *Virginia* and those of this state. I am impressed with a deep conviction of the magnitude of the question, and while I acknowledge its importance in the view in which it is presented on your part, as a subject affecting the domestic institutions of *Virginia*, it assumes in my own mind a much graver character. It seems to me to involve not only essential principles of civil liberty, and the federal relations of the states, but also their sovereign and reserved rights. The inquiry relates to the extent to which each state has surrendered the right, and relinquished the duty of protecting her own citizens, whether in truth the members of the confederacy have bound themselves to give effect to statutes of other states, by which actions, in themselves innocent or meritorious, may be converted into offences branded with infamy, and whether the states have come under an obligation to surrender their citizens to be tried in foreign courts for such offences, and to be punished according to laws that may be abhorrent to their own principles of jurisprudence. It is the old question that has agitated the country since the adoption of the constitution, concerning what has been surrendered by the states, and what has been retained. I must be permitted to express, with all due deference, my belief, that if this question had arisen in any case not supposed to involve a peculiar interest of *Virginia*, that state would have been very unwilling to maintain a construction of the constitution, which, if it is not altogether misunderstood on my part, is incompatible with the true dignity and sovereignty of the states. Nor am I insensible of the delicacy and difficulty of this particular case, but perceiving, as I believe, higher and greater interests behind it; interests of the deepest importance to the confederacy, and to each member individually, I have steadily kept the principle in view in its abstract form, and most general application. A brief review of the correspondence and proceedings already had, will conduce to a better understanding of the points in issue.

The lieutenant governor of *Virginia* saw fit to demand the surrender of three persons, charged by affidavit with the offence of stealing a negro slave in the state of *Virginia*. The affidavit, containing the charge, was vague and informal. It was admitted that the slave had been retaken and restored to his master. Notice was given to the agent charged with the requisition, and to the accused, of a time and place when I would consider the application. In the mean time, the recorder of *New York*, a judicial officer of the state, without any cor-

respondence or communication with me, discharged the accused upon a writ of *habeas corpus*, on the grounds that the testimony upon which the warrant had been issued, was an affidavit to the legal conclusion that the accused were fugitives from justice; that it satisfactorily appeared, upon examination, that neither of the prisoners had committed an offence, even against the laws of *Virginia*, and that the testimony was not such as to authorize their detention.

Notwithstanding the discharge of the accused, and the reasonable presumption that the lieutenant governor was apprised of it, that functionary, without offering to amend the affidavit, or supply the deficiency of proof pointed out by the recorder, demanded my decision upon the requisition. I again referred the lieutenant governor to the defects in the affidavit, upon which the requisition was issued, but inasmuch as no disposition had been manifested on his part to obviate that objection, or relinquish the demand on the ground of informality or insufficiency in the evidence of the charge against the accused, I deemed it due to myself, and to the grave importance of the question which the lieutenant governor thus urged upon me, to meet it directly, and decide it upon the broad grounds of constitutional law. It seemed to me a matter of regret, that the lieutenant governor had seen fit to select a case in which the offence was not charged with the usual formality, and with legal certainty and perspicuity, and in which my consideration of the subject was anticipated by the decision of a competent legal tribunal. It, however, properly belonged to the executive of *Virginia* to determine in what manner, and on what occasion, he would bring the subject before me, and these observations upon points heretofore waived, are made now only for the purpose of assigning the facts their proper place in the record, on an occasion in which the whole subject is opened for reconsideration.

I have assumed the ground that the constitutional provision under which the process issued, applied only to those acts, which, if committed within the jurisdiction of the state in which the accused is found, would be treasonable, felonious, or criminal by the laws of that state, or to those acts which, although they might not be made criminal within that state, were nevertheless made so by the laws of all civilized countries. I maintained that the object of the constitutional provision, was to establish, in the intercourse between the states, the principle of the law of nations, which recognizes the mutual right and obligation of sovereign and independent governments to demand and surrender fugitives from justice. I had adopted the opinion of those jurists who maintain the existence of such a right and such an obligation arising out of the comity of nations, if not from the natural principles of justice, although I was aware that it was denied by some eminent authorities, and was not practically recognized by our own government. I was also aware that the class of offences to which the principle applied, and the class to which it did not apply, had not been accurately defined, even by those who maintained its existence as a part of the law of nations, and I did not forget that, perhaps from this cause, as well as from the facility with which positive stipulations are now substituted in the intercourse of nations for undefined

rights, it had ceased to be practically enforced by the governments of the world. Yet the necessity of such a principle, its abstract justice, and its adaptation to states situated as these are, were so obvious, that I supposed these considerations to have governed the framers of the constitution of the *United States*, in the adoption of the provision which is found in that instrument.

In seeking the legitimate exposition of that provision, it seemed proper to recur to the principle as it had previously existed, and it appeared to me that a just interpretation of the formal compact would limit its operation at least to those cases which had previously been recognized by the civilized part of mankind as those only where a demand should be made.

I endeavoured to shew that the framers of the constitution could never have intended that all offences, of every degree and description, slight trespasses, violations of police laws, and of sumptuary provisions, should be included in the term "crimes," and that an interpretation must be adopted which would reconcile the claim in question with the protection due from the states to their own citizens, and with the opinions of the American people, without which the provision would be inoperative.

In endeavouring to arrive at the intent of the provision, it was important to recollect that the several states had very different criminal codes at the time of the adoption of the constitution, that in some states certain acts, which were not the subject of criminal prosecution in any form, were in other states marked by severe punishment, that local circumstances and peculiar manners might require in one state the creation of new offences, which would be repugnant to the policy or prevailing sentiments of another, and yet that inasmuch as the people of the several states had chiefly the same origin, and had established similar forms of government, there were certain known and defined crimes which were recognized by all. I supposed it was the design of the states, in adopting the provision in question, to secure the punishment of such crimes. To give the greatest possible latitude to that provision, and comprise all those cases which did not come into direct conflict with the civil and criminal policy of this state, and which, therefore, could be recognized without any violation of state sovereignty, I also conceded that a fugitive charged with an act that was felonious or criminal in the state to which he fled, might be demanded and surrendered. For the purpose of applying these principles to the case before me, I shewed that the laws of this state did not admit the principle that one person could be the property of another, and consequently, that they did not admit the possibility that one man could be stolen from another. I assumed that the laws of this state harmonized in all respects with the universal law of all civilized countries, and I maintained that the case presented in the requisition was one not included among those in which, by the law of nations, a right to demand, and an obligation to surrender, existed between independent and sovereign states, and consequently, as an inference from these positions, that it was not a case within the meaning of the constitution.

I observe with regret, and certainly not without surprise, that you are at a loss to perceive the force or application of the arguments and inferences from the law of nations, and that you "advert to them only in order to bring our correspondence back to the narrow limits of which the constitutional question is susceptible."

The lieutenant governor in his reply, so far from questioning the force and application of these arguments and inferences, said, "Now, sir, these doctrines are so completely at war with what I understand to be the law of nations, governing the intercourse, the rights, and the obligations of separate and foreign countries, and by consequence yet more inconsistent with the friendly and federal relations of these states, as prescribed by a constitution of government fully considered and freely adopted by each in its sovereign capacity, that I cannot agree, by remaining silent, to be considered as acquiescing for a moment in their correctness." The lieutenant governor then proceeded to maintain, that by the laws of nature and of nations, one independent and sovereign community would be required to surrender fugitives to another in a case like the present. The authority of *Vattel* was cited by him, and marked with especial emphasis, as shewing that if an offender has escaped and returned to his own country, the injured state ought to apply to his sovereign to have justice done in the case, and that since the latter ought not to suffer his subjects to molest the subjects of other states, or to do them an injury, much less to give open audacious offence to foreign powers, he ought to compel the transgressor to make reparation for the damages or injury, if possible, or to inflict on him an exemplary punishment, or finally, according to the nature and circumstances of the case, to deliver him up to the offended state, to be there brought to justice. It was insisted by the lieutenant governor, that by the law of nations the right to demand and the obligation to surrender, even in cases of ordinary transgressions, were absolute in all cases whatever, and this position was fortified by extracts from the writings of chancellor *Kent*, and by the relations existing between the *Swiss Cantons*. The lieutenant governor expressly maintained, that this principle of international law, in the absence of all positive agreement, applied in full force, and with peculiar fitness, to the relations of the twenty-six states of our confederacy; and he asserted the proposition as essential to his argument, that in adopting the constitution, the states themselves long since converted the abstract principle into an express provision of their fundamental law. Thus much, then, seemed settled; and if, as I trust, I was successful in shewing, by reference to the authorities adduced by the lieutenant governor, and by fair argument from the nature and purposes of the right and obligation, that the principle did not apply to the case under consideration, I submit I had a right to suppose the question conclusively settled.

I beg you to observe the remark made in my answer to the lieutenant governor, "We agree, as I am very happy to perceive, in the position that the object of this (the constitutional) provision, was to recognize and establish between the states, as equal and independent sovereign communities, the mutual right and obligation to demand

and surrender fugitives from justice, as they exist between independent nations by the law of nations." I confess it appears singular to me, that the application of the arguments and inferences drawn from the law of nations, should now be questioned, and more especially so, since your respected predecessor closed the discussion without correcting my misapprehension of the admissions of the lieutenant governor, if they were misapprehended, and submitted the correspondence, in the shape it had then assumed, to the legislature of *Virginia* and to the world. Nevertheless, if it be now thought expedient on your part to abandon the grounds of national right and obligation on which the lieutenant governor sought to establish his demand, and to bring the discussion within the narrow limits by which, as your excellency maintains, the constitutional question is confined, I shall not object to such a course, because I am satisfied that the more fully the subject is considered in all its bearings, the more firm will be found the positions by which I have been governed in the decision of the case.

Your excellency makes an effort to simplify the question, by supposing that instead of adopting the constitution, the states of *Virginia* and *New York* entered into a treaty with each other in 1787, and by that compact declared, that "a person charged in *one* state with treason, felony or other crime, who shall flee from justice, and be found in the other state, shall, on demand of the executive authority of the state from which he fled, be delivered up to the state having jurisdiction of the crime;" and you ask, could I doubt that *New York* would be bound to comply with her solemn compact, or that her refusal would justify *Virginia* in resorting to those violent remedies to which alone, under the law of nations, sovereign states can appeal; and you ask further, whether the constitutional provision can be held less obligatory on *New York* or less beneficial to *Virginia*, because, instead of being a compact between two states, it is one, to the faithful observance of which, six and twenty states have pledged themselves.

It is not perceived how the hypothesis thus put, is calculated to elucidate the point. It is admitted that the provision is in the nature of a compact between sovereign and independent states. It is, however, only a part of the compact. The whole must be examined, and must be construed together, so that all the objects for which it was made may be attained, and effect given to every part.

This rule is recognized in your communication by your reference to the third clause of the second section of the fourth article of the constitution to illustrate the second clause. You do not completely assume the bold ground taken by the committee of the house of delegates, who insist in their report that the second and third clauses have the same object, the protection of slave property, and that the provision for the recapture of slaves would be incomplete if there was not the right contended to be secured by the second clause to demand fugitives from justice. Your argument, from the juxtaposition of the provisions in the constitution, and from a similar juxtaposition in the law of congress, which was enacted to carry them into effect, seeks to prove that the one provision is ancillary to the other. I cannot in any manner

subscribe to this view. The whole of the fourth article relates to what may be called the international rights of the states, and each section and clause of it is distinct and independent of the other. With singular brevity and precision each provides for its own case fully and separately, without any aid from another clause. One would suppose that if the power of demanding fugitives from justice was inserted as ancillary to that of recapturing slaves, it would follow the principal power which it was intended to sustain and enforce. But on the contrary, we not only find it in a separate provision, but first in order, and so little dependent on or connected with the clause respecting the delivery of slaves, that the latter might be stricken out without impairing the former. The assumption of the committee in their report, that the provision concerning the delivery of fugitives from justice was intended to cover more than appeared on the face of it, that southern statesmen manifested a wisdom and sagacity almost more than human, in providing not only for the recapture of fugitive slaves, but also an obligation to send back the offender who should steal a slave from his master, cannot be conceded, because it is wholly unsupported by any account we have of the deliberations of the convention, and because it reflects unfavourably both upon the magnanimity of the southern statesmen, and the sagacity of others associated with them in that august council. I have carefully examined the debates of the national convention, and the proceedings of the state conventions by which the constitution was ratified: I have also referred to contemporaneous expositions, and more recent authorities, and I have no where found any grounds for supposing that the constitutional provision for the surrender of fugitives from justice had any reference whatever to the domestic institutions and interests referred to in your letter, or that those institutions or interests were at all considered in its adoption.

The true question, then, it appears to me, is whether the general terms used in the clause requiring the delivery of a person charged with treason, felony or other crime, do or do not include the case of persons liable to punishment under the statute of *Virginia* for stealing a human being from another, who by the laws of the state is the owner of the person stolen. And this turns upon the meaning of the word "crime." I cannot admit, as it is contended by the committee of the house of delegates, that the provision in question secures to one state the most unlimited right to demand, and imposes on another the most unqualified duty to surrender fugitives from justice. On the contrary, I find in the constitution itself evidence that its framers understood the import of the words used, and that those words were intentionally qualified. The fourth section of the second article provides that all officers of the *United States* shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanours. The addition of the term "misdemeanours" shews that in the opinion of the convention, offences of that nature were not included in the word "crimes." "Crimes" and "misdemeanours" have been distinguished by some writers thus: "Misdemeanour is an offence of a less atrocious nature than a crime. Crimes

and misdemeanours are mere synonymous terms, but in common usage the word crime is made to denote offences of a deeper and more atrocious dye, while small faults and omissions of less consequence are comprised under the gentler name of misdemeanours." Similar to this is the distinction in regard to classes or grades of crimes, found in the writers upon the law of nations. The distinction made by *Grotius* is between "offences against the state, or those of a very heinous nature, or which deeply affect the public safety," and those which are called "lesser faults." *Vattel* divides offences into "crimes of great atrocity, or deeply affecting the public safety," on the one hand, and ordinary transgressions, which are "only the subjects of civil prosecution, either with a view to the recovery of damages, or the infliction of a slight civil punishment" on the other. If it were enquired what standard of definition would most naturally be consulted by the framers of a compact or constitution between twenty-six states which differed in their codes, I think it would be answered that the standard would be, not the code of one nor that of another of the states, but the universal law of civilized men, or at least the general laws which they all recognized.

I think there can be no serious dispute that there are some offences for which a fugitive cannot be demanded. I will not further repeat what has been already urged in favour of recurring to what you will certainly admit, the analogous principle supposed to be contained in the law of nations. I will merely observe now, that the reasons of public policy, of convenience, and of self-protection, which would render the establishment of such a rule at all necessary, would also furnish its limitations, and the fact that it never has been extended to other offences than those of an atrocious or heinous description, and such as were recognized to be of that character by the nation upon whom the demand was made, affords the best evidence that there is no good reason for its extension to any other crimes.

But it is in the relations of the states to each other, and in the duty of a state government to its own citizens, that the most cogent reasons are found for denying the unlimited extent of the right to demand fugitives from justice. I have dwelt on this point at large in my former communications, and from the circumstance that the views thus presented have not been made the subject of reply either by your excellency or by the committee of the house of delegates, I am constrained to believe they have not been distinctly understood.

The proposition for which your excellency contends, the right to demand a fugitive from justice, charged with any crime known to the laws of the state making the demand, would so fatally disturb the relations of the states, as to defeat the principal object of the constitution, a more perfect union. There are laws now in force in some of the states, which would appear to the citizens of other states very absurd. Several months previous to the application of the lieutenant governor of *Virginia*, which is the subject of this correspondence, a formal demand was made upon me by the governor of *Pennsylvania*, for the delivery of a fugitive charged with the offence of fornication, for which he had been indicted under a statute of that state. An ap-

plication has also been made to me by the executive of *New Hampshire*, to surrender a fugitive charged with adultery. These applications rendered it my duty to give the constitutional provision the most deliberate consideration, and that consideration resulted in the adoption of the principles heretofore maintained in this correspondence. The requisition from *Virginia* came so clearly within these principles, that I could not grant it without departure from the course thus adopted. There is a law of our nature which would forbid the execution of any statute hostile to all our habits, opinions and policy, and the attempt to execute it would be fruitless, or would result in the dissolution of the Union, and instead of enjoying the more perfect union, designed by our forefathers, we should be aliens and enemies. I shall not complain that in every view of the case presented by *Virginia*, the personal security of the citizen is overlooked. It is, as I have before contended, essential in the constitution of the *United States*, and in that of this state, and indeed in the theory of republican government, that the personal security of every citizen is guarantied except in cases of commission of treason, felony or other crime. While the ground I assume seems to you to involve the principle that one state may, upon the plea of the universal law of civilized countries, excuse itself from surrendering for offences deeply injurious to the public welfare, or affecting the social condition of another state, by reason of its peculiar domestic institutions, it appears to have been altogether forgotten that it follows, from your position, that any state may declare any act, however harmless, to be a felony, and that every other state would thus be bound to acknowledge that act to be a crime, although by the provisions of its own constitution or laws, it may have declared the same act to be a duty. The legislature of any state might declare it a crime to omit to pay a debt, or to neglect to go to church, or to look upon a magistrate, or to instruct a slave, or to shelter or clothe a free negro. Even the crime of the fugitives in the present case may be, and if the report of the recorder of *New York* be true, is a constructive one. By the report of the committee of the house of delegates, I learn that the following are the provisions of the statute of *Virginia*, under which the present requisition was issued: "Whoever shall hereafter carry, or cause to be carried, any slave or slaves out of any county or corporation within the same, without the consent of the owner or owners of such slave or slaves, or of the guardian of such owner or owners, if he, she, or they be a minor or minors, and with the intention to defraud or deprive such owner or owners of such slave or slaves, shall be adjudged guilty of felony, and subject to prosecution, as in other cases of felony, and upon conviction thereof, shall be punished by fine, not less than one hundred nor more than five hundred dollars, and shall also be imprisoned in the jail or penitentiary-house, for a period not less than two nor more than four years, which fine and imprisonment shall be fixed and ascertained by a jury." And it is further enacted, "that not only all those who shall willingly and designedly carry away slaves as aforesaid, but all masters of vessels, who, having a slave or slaves on board their vessel, shall sail beyond the limits of any county

with such slave or slaves on board, shall be considered as carrying off or removing such slave or slaves within the true intent and meaning of this act."

The committee, commenting upon this law, observe: "This statute was passed as early as 1753, and the only change which has been made in it, consists in the substitution in 1799, of confinement in the penitentiary in place of death without benefit of clergy, as the punishment for the felony created by it. Let it not be said that these laws are harsh. They are less sanguinary than they were at the adoption of the constitution. But if they be so, citizens of other states need not come, unless they choose, into *Virginia*, and if they do, they need not violate her laws, and incur their penalties." I certainly shall not violate the injunction of the committee, by asserting that these laws are harsh; for I freely admit, as I have repeatedly done, that the people of *Virginia* have sovereign power to establish any code of laws they deem proper. Courtesy, if no other consideration, would prevent me on this occasion from questioning the necessity or usefulness of laws so repugnant to the sentiments of the people of this state. I admit, moreover, most fully, that citizens of this state need not go to *Virginia* unless they choose; and if they do, they need not violate her laws nor incur their penalties. But it will be conceded, that citizens of this state have the right to go to *Virginia*, or elsewhere, if they choose; and I must be allowed to insist, that although when in *Virginia* they are liable to be tried, convicted and punished according to the laws established there, yet that, according to the principles of morality and justice, recognized here, a criminal intent is essential to every felony, and that this state never could have intended, when adopting the constitution, to bind herself to surrender her citizens to be carried beyond her own jurisdiction, and tried for constructive felonies created by law, and involving no moral guilt, contravening none of the principles of moral justice, and exempt from censure by the universal law of civilized states. The power to enact such laws is equally possessed by all the states; the temptations and inducements to its exercise may arise in other states as well as in *Virginia*, and in that case the principle now asserted by your excellency might be made a most effectual instrument of assailing those very domestic institutions and interests you are so solicitous to guard. In one state it has already been declared that by its fundamental laws, no human being can be held as a slave within its boundaries. The same principle is established in this state, except so far as the constitution and laws of the *United States* require the surrender of a fugitive slave, held to labour or service in another state by the laws thereof, when demanded, and upon proof that he is a slave. Suppose the principle should be enforced by a statute of any state, declaring that any person who should claim, or pretend to hold another in involuntary servitude, should be guilty of a felony, and then suppose a citizen of *Virginia*, travelling with his slave in the state having such laws, and incurring this penalty, should be demanded of your excellency as a fugitive. A refusal, it is presumed, would be immediately pronounced, a collision would ensue, if the state making the demand were to insist

upon the principle you now maintain, and this would probably bring on measures of restriction, inspection and reprisal, which might soon involve the whole confederacy in a general conflict.

I cannot but think that a fair and candid review of these considerations will induce your excellency's concurrence in the opinion, that the constitutional provision in question is to be construed by the same general rules which are applicable to all laws, treaties and compacts—that it is to receive a reasonable construction—that it is not to be considered singly, but in connection with all the other provisions of the same instrument; that full and fair effect is to be given to each of them so that no one of them shall be so applied as to destroy any other, and much less to defeat the main object of the instrument itself, but that all shall be satisfied and reconciled as nearly as possible; and if it is found impracticable to give the full effect which the utmost latitude would allow to any one stipulation, that then the more important shall prevail. These maxims, rendered necessary by the imperfections of human language, and sanctioned by the wisdom of ages, if applied to the constitution in the spirit in which it was framed, will enable us to fulfil all its obligations, and enjoy all the blessings it promised and has bestowed.

In giving to the particular provision under examination a reasonable construction, such as will fulfil the general design of all the states at the time of its adoption, instead of affording protection to peculiar interests, without violence to moral sentiments, the civil policy or settled principles of any state, it seems to me all is accomplished that can be expected of any human ordinance.

You ask, who is to decide whether the crime charged in a requisition is against the state, or of such a heinous nature as to bring it within my definition; and you suggest that the doctrines for which I contend would establish a very inconvenient and totally impracticable rule. I cannot admit that the science of jurisprudence is as imperfect and vague as you suppose. The principles of a moral law were written by the hand of God in the hearts of men. The light of revelation brings them out in bolder relief, and I apprehend that on examination of the common law, the civil law, and the statutes of all civilized and christian countries, it will be found not only that murder, treason, arson, burglary, forgery, perjury, rape, incest, bigamy, and the like, are "crimes," but also that they are neither "lesser faults," nor "ordinary transgressions," while adultery, petty stealing, libels, trespasses upon lands, and the like, are not regarded as "crimes of great atrocity, or deeply affecting the public safety."

Your excellency observes, that there are domestic interests of a peculiarly delicate nature involved in this question, and that *Virginia* cannot admit the right of *New York*, or any other state, to call in question either the legality or policy of her domestic institutions. I trust I have sufficiently shewed, that however the interests alluded to may have become involved in this discussion, it has happened through no act or design on my part. The principle I have maintained was asserted from a conviction, yet unshaken, that it was necessary for the protection of the domestic rights of the citizens of this state, and from

no desire to invade or assail the institutions of other states. If, therefore, those interests have become involved, it is because a constitutional provision, intended for general purposes, without reference to them, is sought to be extended so as to furnish an additional guaranty and safeguard for their protection, beyond those expressly established by the constitution.

The committee of the house of delegates in their report, refer to the terms in the constitution, "treason, felony, or other crime," as common law terms, and very properly remark, that they must be taken to have been used in a common law sense. I am inclined to think that a fair application of this rule of construction would relieve the subject of most if not all its difficulty. The common law was, as the committee state, the law of the land in each of the states which were parties to the constitution, and the terms of that law were familiar to its framers. Its principles were no less familiar, and particularly those which related to crimes. The authors of the constitution knew the offences for which punishment had been prescribed, and the grades of those offences. There was a common standard, which all parties understood, and to which they could refer, and if that standard is to be considered in reference to the grades and denominations of offences, there would seem a still greater propriety in referring to it to ascertain what were the acts which by that law were deemed crimes. It may be fairly presumed that those acts were contemplated by the convention, when it provided for the delivery of fugitives; and it may with equal fairness be presumed that no others were intended to be provided for. It can hardly be necessary to remind your excellency that by the common law of *England*, one man could not have property in another, and that larceny could not be charged of carrying away a human being. The kidnapping of a man was an offence against the person himself, and not against any right of property. If, then, we are to look to the common law for an exposition of the meaning of the convention, it would seem quite clear that the provision in question was never intended to embrace such a case as that presented by your predecessor. This view of the subject is substantially the same taken in my former communication, where I referred to the universal laws of the civilized world, as affording the means of determining the kind of offences intended to be included in the constitutional provision. The common law of *England* may be said to define those offences which the laws of the civilized world recognize as deserving punishment at all times and in all countries. A desire to avoid the appearance of technicality induced a description of those crimes by a reference to the laws of the civilized world, rather than to the system of a particular country, although that system is acknowledged by us to be the most perfect which has existed among men.

I am referred, by your excellency, to the case of *Clark*, decided by the supreme court of this state. With due respect, I cannot perceive its bearing on the question at issue. The court held, that where the executive of this state had issued his warrant for the surrender of a person charged with a highly criminal offence, committed in *Rhode*

Island, they would not examine into the alleged crime, but that the responsibility of determining whether an offence was charged, devolved upon the executive of whom the demand was made, and had been discharged by him. The question whether the alleged offence was a crime recognized by the laws of *New York*, was not even raised in the case, and was not discussed by the court. In fact, the offence was one familiar to our laws, and there was, therefore, no occasion to examine the nature of the crime charged. I have been unable to discover, in the reasons assigned by the learned chief justice, any ground for supposing that the supreme court intended to intimate that the governor of this state was bound to submit his judgment, in regard to the class of cases falling within the constitutional provision, to that of the executive by whom the requisition was made. Indeed, the principle that the decision upon the obligation to surrender fugitives demanded, rests with the executive upon whom the demand is made, is recognized not only in the case of *Clark*, but in every case in which the question could be raised.

You refer, also, to a decision of the supreme court of this state, recognizing the constitutional right of the citizen of another state to reclaim his fugitive slave, and you remark, that you are unable to discover, why I should refuse to surrender fugitives from justice charged with stealing a slave, when the obligation to surrender the slave himself, is emphatically sustained by the highest judicial authorities of this state. The answer seems to me, both obvious and conclusive, and is found in the difference between the constitutional provision concerning fugitive slaves, and that which relates to fugitives from justice. In the first of these cases, the laws of the states concerning slavery are recognized by the constitution: "No person held to service or labour in one state, under the laws thereof, shall be discharged from such service, &c." The other constitutional provision makes no reference to the laws of the state from which the fugitive flees, but leaves its terms open to construction upon general principles, like any other form of expression in the instrument. There are good reasons for the difference in the language of these provisions. The section in regard to fugitive slaves, relates to a civil right of a citizen, for the establishment of which, the courts of the state where the person claimed as property may be found, are opened to him. In the other case, a public wrong is alleged to have been committed, and the free citizen of a state is demanded, that he may be tried and punished in the jurisdiction of another state, and under its laws. They are, then, as different as the assertion of a private right, and the punishment of a public offence. A citizen of *Virginia* may be prosecuted in our courts for the publication of a libel in this state, but I doubt much, whether, if he were indicted here and demanded as a fugitive from justice, your excellency would be bound to surrender him in compliance with the requisition. The provision concerning fugitive slaves, can, in no case, affect the rights of any citizen of this state, because no such citizen could be a slave in another state, or be "held to service or labour" therein. But the clause concerning fugitives from justice, embraces citizens of this state, whose liberty is dear to her, and is guarantied by her constitution.

It was not the least, among the subjects of complaint by our ancestors, against the British king, that he had combined with others to subject them to a jurisdiction foreign to their own constitution, and unacknowledged by their laws. It is not to be supposed, that those who had delivered themselves by force from this intolerable oppression, would perpetuate it in another form. While it is freely admitted that this consideration cannot impair in any way the constitutional provision concerning fugitives from justice, it is believed to be not irrelevant, for the purpose of shewing that the provision was designed for the equal and mutual protection of all the states, not for the peculiar advantage of one or more, and that consequently, it ought not to be extended by latitude of construction so as to impair the sovereignty of the states, or deprive their citizens of the protection of their own laws and tribunals.

Your excellency is pleased to observe, that the positions I have assumed would lead certainly to my conclusions, that the states of our Union have fatally impaired their original rights by adopting the federal constitution, without preserving any adequate means for the adjustment of questions which must necessarily arise between them; that if the correlative rights and duties of the states of the Union are to be determined only by reference to the vague principles of international law, having surrendered the powers which they once possessed of declaring war and making treaties, they have deprived themselves of the only sanctions by which their rights can be protected, or their wrongs redressed, and that they have effectually yielded the substance, and retained only the shadow of that sovereignty which I so readily conceded to them. I am at a loss to find in what part of this correspondence I have admitted it as a just conclusion from my positions, that "certain original rights" of the states are not only impaired, but are "fatally impaired," because no adequate means were preserved for the adjustment of questions which must necessarily arise between them. The "original rights" supposed, are those the states enjoyed as independent and sovereign communities at the time of the adoption of the constitution, or in other words, the rights recognized by the law of nations as those of sovereign and independent states. Although the lieutenant governor maintained, that by the law of nations one state may lawfully demand and another is legally bound to surrender a fugitive from justice charged with the crime of stealing a slave, I do not discover that your excellency affirms this proposition. Relying, therefore, upon my former argument on that subject, I repeat that what is claimed by the executive of *Virginia* in the present case, is not one of the original rights supposed. The question may be tested at once by supposing that a citizen of *Great Britain* had "stolen" the negro slave in question. If the claim for the surrender of the fugitive be such an original right as is supposed, the refusal of the British government would be a just cause for war. I apprehend, with all due respect, that the federal government, even if it were accustomed to exercise the power required, would not feel itself called upon to demand the fugitive, and that neither the British government, nor that of any other foreign state, would in such a case admit an obligation to surrender, nor

would the sense of mankind justify a resort to war in case of refusal. But perhaps the "original right," supposed to be so fatally impaired, is the right to negotiate for the surrender of fugitives. I have already attempted to shew in this correspondence, that the right secured to each state by the constitution to demand fugitives from justice, if that right is defined so as to include cases of treason, felony, or any other offence made criminal by the universal laws of all civilized countries, is as broadly extended as would be consistent with the peace and harmony of the Union, and the security of the citizens of the several states. With submission, it seems to me that the right of negotiation could not be said to have been unprofitably surrendered, even if it had been exchanged for the constitutional right of recapture, as I have defined it. While it is not necessary to deny that questions might arise between the states from a desire on the part of some of them to enlarge the definition of cases in which the right to demand fugitives should be conceded, it cannot be improper to express my conviction, fortified by your own admission, that under existing circumstances, negotiation upon the present question would probably prove unavailing. It thus appears, I think, that the claim for fugitives for the offence under consideration, is not an "original right," because no state had originally a right to make war to enforce it, and consequently that the states of our Union have not "fatally impaired" any "original right," by adopting the constitution, without preserving adequate means for the adjustment of questions which may arise between them. But is it true in fact, that the right of negotiation was surrendered? The constitution provides a practicable mode of negotiation upon every question which can arise between the states, by contemplating amendments of the compact between them; and if it be said that it is encumbered by requiring the assent of three fourths of the states, it is a sufficient answer that it seemed to the states wise to establish that safeguard against innovation.

I cannot close this communication without assuring your excellency that the delay which has occurred in making this review of the subject of my correspondence with your predecessor, has resulted from circumstances altogether beyond my control, and in no manner from any want of respect to the legislature of *Virginia*. Having now discharged that duty with due consideration, as I trust, of the importance of the subject, and of the rights and interests of the people of *Virginia* involved in the discussion, as well as with a proper regard to the sanctions of the constitution, and my obligations to the people of this state, I very cheerfully abide such further examination of the principles I have adopted, as they may receive from the other states, whose attention is invoked by the state of *Virginia*.

I pray your excellency to accept the assurance of the sincere respect with which

I remain,

Your obedient servant,

WILLIAM H. SEWARD.

His Excellency THOMAS W. GILMER,

Governor of the State of Virginia.

THE GOVERNOR OF NEW YORK TO THE GOVERNOR OF VIRGINIA.

STATE OF NEW YORK.

EXECUTIVE DEPARTMENT,
Albany, November 10th, 1840.

SIR,

I acknowledge the receipt of your letters of the 23d of October, and of the 5th instant. My answer to your previous communication, transmitting to me the preamble and resolutions of the general assembly of *Virginia*, was sent yesterday. I acknowledge with many thanks, the kindness you have manifested during the unavoidable delay which has occurred, and I earnestly hope that no public inconvenience will result from it.

Your excellency is pleased to observe, that I have been misled into error in reference to the course which I suppose *Virginia* to have taken in anticipation of the ultimate consequences of my declining to comply with the requisition of your predecessor, and you insist that I have done injustice to him in ascribing to him, in my annual message to the legislature of this state, a menace of secession from the Union. The language of your predecessor, to which I alluded on the occasion referred to, was as follows. It is an extract of his message to the legislature of *Virginia*.

"I feel that I owe you an apology for addressing any thing in the way of argument to you for the purpose of exposing the unsoundness and fallacy of the construction assumed and acted on by the governor of *New York*.

"It is very much to be deplored, that when the excitement of the public mind in the south, justly caused by the unwarrantable assaults upon our institutions and our rights by organized societies in the states having no slaves, was beginning to subside, the executive of so powerful and influential a state as *New York* should have adopted a construction of the constitution which has induced him to disregard one of its imperative requisitions, upon grounds so well calculated to inspire the infatuated abolitionists with new hopes and fresh zeal in their unholy crusade against our property and our peace, and at the same time to assure them of immunity and protection from responsibility for the violation of our laws.

"But this question has been raised in a practical form between this state and *New York*, and between *Georgia* and *Maine*. And it behooves us to meet it at once, and to insist upon our rights at every hazard. It is the duty of congress to remove any ambiguity, if there be any, in the laws made to carry into effect the provisions of the constitution for the surrender of fugitives; and if there be no defect or ambiguity in those laws, to provide for the prompt and faithful execution of them, by confiding the execution to those whose interpretation of their duty is consistent with our rights, and the behests of the constitution. If redress for these wrongs, and security against their repetition cannot be procured in either of these modes, it will behove the general assembly to consider whether their own legislative power

will not furnish means of securing the states against such flagrant invasion of their rights, without infringing the restrictive provisions of the constitution of the *United States*. If there be no such means compatible with their obligations to the Union, it may ultimately become our *imperative and solemn duty* to appeal from the cancelled obligations of the compact to original rights and the law of self-preservation."

My remarks on the subject were as follows:

"The governor of *Virginia*, in his last annual message, referred the subject to the consideration of the legislature of that state, and declared that my construction of the constitution of the *United States* could not be acquiesced in or submitted to. He added that if it were allowed to prevail, and no relief could be obtained against what he designated as a flagrant invasion of the rights of *Virginia*, either by an amendment of the constitution of the *United States*, or by the action of the legislature of *Virginia*, it might ultimately become the imperative and solemn duty of *Virginia* to appeal from the cancelled obligations of the national compact to original rights, and the law of self-preservation.

"I confess my surprise that it should, in any part of the Union, be regarded as a new and startling doctrine, that the constitutional power of the executive of any other state to demand the surrender of a citizen of this state, to be carried to the former, and tried for an offence committed there, is limited to cases in which the offence charged is recognized as criminal by the statute laws of this state, by the common law, or by the universal laws of mankind. Nor can I withhold the expression of my sincere regret, that a construction of the constitution manifestly necessary to maintain the sovereignty of this state, and the personal rights of her citizens, should be regarded by the executive of *Virginia*, as justifying, in any contingency, a menace of secession from the Union."

However erroneous my apprehension of your predecessor's meaning may have been, I trust I need not assure you that it was impossible for me to intend unfairness or discourtesy towards him in submitting his views of the important subject to the representatives of the people of this state. I confess, that before receiving your excellency's explanation, I laboured under the belief, that in stating that it might ultimately become the imperative and solemn duty of *Virginia* to appeal from the cancelled obligations of the compact to original rights, and the law of self-preservation, your predecessor intended to be understood as intimating the possibility that *Virginia*, in the event of the failure of all the modes of redress suggested by him, might ultimately adopt that of secession. Nevertheless, since your excellency assures me that my inference was erroneous, I have great pleasure in acknowledging my satisfaction with the explanation, although your excellency has, doubtless through inadvertence, omitted to explain what was the true understanding of the expression misapprehended. I shall not fail to communicate the explanation to the legislature of this state, not only because I desire to do no injustice to your predecessor, but also because I deem it very important that the views of the state of *Virginia* in relation to every part of the subject should be

fully and fairly understood by the legislature, and by the people of this state.

Your excellency, on the other hand, is pleased to submit to me whether, by the position assumed in this discussion, this state has not virtually withdrawn herself from the obligations of the Union, and nullified a law of congress admitted to be constitutional. Having, in my communication transmitted to you yesterday, reviewed all the material questions which have been presented on the part of the state of *Virginia*, and having no reason to doubt that your excellency will allow to my conclusions their just weight, it will of course not be expected that I should answer your excellency's question at length. It will be sufficient to remind you that according to the views I have adopted, the true positions of the parties are these:—The executive of *Virginia* demands what is not authorized by the constitution, and the executive of this state declines compliance with the unconstitutional demand. It is not without sincere regret I perceive that in persisting in this demand the state of *Virginia* protracts a question of deep and exciting interest, a question which, if I had not assurances both in the moderation already shewn on the part of the state of *Virginia*, and in the character of the American people, that it will be conducted in a spirit of candour and mutual conciliation, I should very much fear might prove injurious to the harmony of the Union. *Virginia* proposes to take the sense of her sister states upon the fidelity with which *New York* performs her federal obligations. What this sense will be will depend undoubtedly upon their judgment concerning the construction of those obligations, which acting as her representative I have adopted.

Accustomed to enquire carefully concerning my own duty, and to discharge it conscientiously when ascertained, I am content now to leave the subject, without looking to ultimate or possible consequences, the contemplation of which ought not to affect my decision, and the responsibilities of which belong in no measure to myself.

I beg your excellency to accept the assurances of my sincere respect and consideration.

WILLIAM H. SEWARD.

His Excellency Thomas W. Gilmer,
Governor of the State of Virginia.

LETTER FROM THE GOVERNOR OF VIRGINIA TO THE GOVERNORS OF THE SLAVEHOLDING STATES.

Executive Department,
November 12th, 1840.

Sir,

I have had the honour already to transmit to your excellency, a copy of certain proceedings of the general assembly of *Virginia*, in relation to the refusal of the governor of *New York* to surrender cer-

tain free negroes on the demand of the executive of this state. These fugitives from justice were charged with having stolen within the jurisdiction of *Virginia*, a slave, the property of a citizen of this state, and with having fled to the state of *New York*. By one of the resolutions of the general assembly of this state, I am instructed "to open a correspondence with the executive of each of the slaveholding states, requesting their co-operation in any necessary and proper measure of redress which *Virginia* may be forced to adopt." I forbore to address your excellency on this subject, until I had again and again endeavoured to induce the executive of *New York* to retract a position which is deemed utterly untenable, and destructive of the clear, acknowledged constitutional rights of the other states. The final and deliberate purpose of the governor of *New York*, to adhere to so gross and dangerous a perversion of the federal constitution, having been at length announced to me, I have now no alternative, and in compliance with the resolution of the general assembly, must invoke on behalf of *Virginia*, and of every slaveholding state, the earnest and effectual consideration by your state, of a subject which so nearly and vitally affects our common interests.

The report and resolutions which have been communicated to your excellency will apprise you of the general views entertained in reference to this controversy, by the last general assembly of this state, and by the governor of *New York*. Fortunately for the slaveholding states, the question involved has been so distinctly and emphatically settled by the plain terms of the federal constitution, that it is impossible for the ingenuity or the prejudices of the human mind to deny or evade our just demand, without doing manifest violence to that sacred instrument. The slaveholding states stand now precisely where they stood when the constitution was submitted by the convention of 1787, and ratified by all the states, claiming the same rights and no more, which every state then readily conceded to us; and it seems to me that the question which has been forced on us by the refusal of the governor of *New York* to abide by the constitution, is one on which we can have little to apprehend from the justice and patriotism even of the non-slaveholding states. It is not a question whether slavery ought originally to have been introduced, or should continue to exist in this country. If it were, many of the states whose policy on this subject differs from our own, could not fail to recollect their agency in introducing the present system of slavery, and the very recent periods at which some of them, and particularly *New York*, have abolished it within their own borders. The question is, whether the constitution shall continue to afford to the slaveholding states, that protection which was expected by us and designed by all the states. It is well known that, though most of the states held slaves at the period when our Union was formed, yet the subject of our slave population was the chief and most perplexing difficulty with the framers of the constitution. This was then, as it is now, one of those subjects where it is easier to feel than to reason, where misguided passion may meditate and accomplish more mischief than the judgment can redress, where the sacred names of philanthropy and religion may be

invoked by demons to cover the blood-stain of their impious and cruel designs.

The federal constitution has been voluntarily ratified by each of the states, and its provisions and all laws made in pursuance of them, are the supreme law of every state. This instrument, as a compact between the states, permitted the importation of slaves from foreign countries for a specified time, and fixed the maximum rate of impost duties which could be levied on them by congress. That time expired in 1808, though the states had generally ceased to avail themselves of this stipulated right long before. Still the right was guaranteed to each of the original states by the letter of the constitution.

The second section of the first article of the federal constitution recognizes slaves as an element of taxation and representation. The second section of the fourth article contains but three provisions, which are as follow :

"1. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

"2. A person charged in any state with treason, felony or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

"3. No person held to service or labour in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labour, but shall be delivered up, on claim of the party to whom such service or labour may be due."

Here the right of the master to his slave as property is distinctly recognized, not only in the state where the slave "is held to service or labour," but for the purpose of reclaiming and recovering him, in any other state to which the slave may escape. The federal constitution does most distinctly and unequivocally recognize the existence of slavery in the *United States;* and congress, by their act of February 1793, have provided specific means for the security of the master's rights throughout the states.

The governor of *New York* has refused to surrender these fugitives from justice on the demand of *Virginia*, because they are charged with having stolen a slave, and because slavery is not now recognized by the laws of *New York*. With the same propriety, and for the stronger reason, he might, and no doubt would, (if the case had been left by the act of congress within the sphere of his official discretion,) refuse to permit a fugitive slave to be recovered by his master within the jurisdiction of *New York*. In fact the principles assumed by the governor of *New York* in this case, would lead to the subversion of the federal compact, and leave each state in its intercourse with the others at perfect liberty to prescribe for itself and its co-states any rule which its caprice or prejudice might dictate. If the federal constitution has ceased to be the supreme law in so essential a particular, our domestic institutions and our property are exposed to perils against which we have no adequate legal defence, either as it regards the in-

cursions of the states or of the federal government. The construction which absolves one state, or any department of the federal or state government, from its obligation to obey the constitution, necessarily absolves all other states and all other departments. The state and federal judiciary of *New York*, its senators and representatives in congress, the judiciary, the representatives, the executives of other states, are no more bound to obey the constitution, than is the governor of *New York*. If the state of *Virginia* has no right to demand the surrender of a fugitive who has stolen a slave here and sought refuge in the state of *New York*, because slavery is not recognized by the laws of *New York*, the owner of a slave can have no right to recover his property there, and the slaveholding states are exposed to all the burdens of our federal compact, without deriving any equivalent benefit, to all the dangers of a delusive alliance, without the means of self-protection which have been surrendered for its sake. It is in vain for us to be told that the state of *New York* is prepared to acknowledge our perfect right of property in our lands and chattels, and that the thief who steals a hat or pair of shoes will be surrendered to answer the criminal accusation under our laws, while he who steals or *spirits* away our slaves, shall be permitted to do so with impunity, under the protection of that state.

The question which lies at the foundation of all the social relations between the states, is not, what measure of justice may be vouchsafed to us by the arbitrary pleasure of any state, but whether the rights and the remedies secured by our compact of union, and prescribed on the paramount authority of all the states, shall continue to prevail.

It cannot be maintained that the constitutional rights of the slaveholding states have not been recognized by the laws of *New York*. They are necessarily recognized by each state of the Union, so long as the federal constitution continues to be "the supreme law of the land." If the governor of *New York* admits that instrument to be valid and binding on the citizens and officers of his state, he cannot deny that the right of *Virginia* to make this demand is perfect, although the fugitives are charged with stealing a slave. He must succeed in establishing the authority of his state as paramount to the constitution of the *United States*, or he must admit that a law which the citizens of that state have ratified in convention as their supreme law, and which he and every other state officer has sworn to support as such, does recognize slavery, so far, at least, as to give to this state the right to demand the surrender of a fugitive charged with stealing a slave. And this is the whole extent of our controversy; for *Virginia* has not attempted to prescribe any new rule or social relation to *New York*, nor to interfere in any manner with those which she may have prescribed for herself. It is insisted that the federal constitution has conferred on *Virginia* the right to make this demand, and imposed on *New York* the obligation to comply with it; and it remains to be seen, whether that state can occupy the position in which she is involved by the course of her chief magistrate, whether as a member of the Union, she shall participate in its blessings without sharing its responsibilities and its burdens.

Virginia is not without ample means of redress for all the wrongs which may be anticipated. She does not appeal to the states possessing a common interest on this subject with herself, from any distrust of her cause, or from any wish to involve others in controversy on her account. She desires to shrink from no peril which threatens her alone, nor to avoid her just share of that which endangers the rights of any member of the Union. If it had been her object merely to vindicate her own rights, she could have done so by precipitating this question to extremes, without consultation with her co-states. Had she followed the example of the chief magistrate of *New York*, and disregarded all constitutional obligations on this subject, she would have had no doubt of the sympathies, though she might not have deserved the succour, of those to whom she now appeals. But the constitution of the *United States*, and the incalculable benefits of our union, are too dear to every Virginian to be abandoned, while there remains a hope of their preservation; and it has been deemed respectful to those states which are exposed to the same dangers, and which claim the same rights as ourselves, to submit our controversy to their calm reflection, that they may advise us if we have mistaken their constitutional rights and our own, or aid us by their counsel and co-operation in our effort to re-establish the just and constitutional relations of the states.

It may be asked, by what means shall this be effected, and why has *Virginia* asked you to "co-operate in any necessary and proper measure of redress which she may be forced to adopt," without indicating the character of the measures which are contemplated? It is because *Virginia* does not regard this question as her own, but as involving principles of the utmost consequence to all the states, that she desires to confer with her sister states as to the mode and measure of redress, instead of committing herself and them by action, the necessity of which she is anxious, if possible, altogether to avert. She desires to be assured by your authority, that she has not mistaken her own rights and yours, and to obtain the benefit of your agency in effectually vindicating them.

It may be asked, why this appeal is made only to the slaveholding states. It is answered, that unless there were a necessity to invite the non-slaveholding states to meet us in convention, as co-arbiters of this controversy, it would be needless to ask their counsel or co-operation in regard to a subject on which they may be supposed to feel no other than a general interest as members of the Union. The expectation is still confidently indulged, that reason alone will be found adequate to re-establish the principles and letter of the constitution in this essential particular, and we cannot with propriety ask that those who have no immediate interest in the question, should furnish arguments for us who have. *Virginia* has forborne to invite the co-operation of the non-slaveholding states, from no want of confidence in their devotion to the Union, and to the principles of mutual and just concession in which it has been founded. While she could not fail to be gratified by the voluntary sanction of their judgment in favour of our rights under the constitution, she has not desired to em-

barrass them, nor to commit herself by an appeal to their authority. Besides, this is a question on which all the states have continued from 1787 to the present time, to concur in the conclusions established by the constitution and maintained by *Virginia*, and it might be deemed disrespectful to presume that any state, even *New York* herself, would sanction the dangerous fallacies of governor *Seward*. But two instances are remembered in which executive officers of the states have hesitated to comply with the requisitions of the act of congress, where the peculiar interests of the southern states were involved, while it is a source of much satisfaction to know, that as yet, no state has deliberately sustained their heresies. The legislature of *Virginia* have therefore deemed it sufficient to lay this general subject before the non-slaveholding states, without inviting their immediate co-operation. I have accordingly communicated the proceedings of our general assembly to all the states.

I am not instructed by the legislature to suggest any specific line of policy as likely to be adopted by this state, or to be recommended to you. Common interests and common dangers require that there should be mutual confidence and concert between us. Should the state of *New York*, or any other state, persist in this arbitrary denial of our rights, you are apprised by the resolutions of our legislature, that the state of *Virginia* does not intend to submit to so dangerous and palpable a violation of our compact. We desire to know whether those states which, like ourselves, have peculiar interests involved in this question, concur in our convictions of right, and in our resolution to maintain them.

There is no difficulty in finding means for our defence. The difficulty is, in being convinced that any portion of our countrymen will drive us to resort to them. There can be no more auspicious occasion than the present, for the slaveholding states to demand an explicit understanding as to their constitutional rights, and to terminate forever the experiments which mischievous spirits have been allowed to make on our property and our peace. If there is any question connected with southern interests, which can be met with calmness and composure, with solemn deference for the established principles of abstract justice and constitutional law, by the whole American people, it is surely this. If the appalling dangers and glorious triumphs of which our Union has been the witness, can inspire no reverence for the past, will the sacred names of justice, fidelity, patriotism and religion, avail nothing for the future? Has the maniac yell of fanaticism silenced all these? If it be so, it is time that the painful truth were known to all, and that we may no longer lean on a broken reed, which will only pierce our sides.

I have been encouraged, however, to hope for a more cheering result. I have thought that this question was destined to arrest the serious attention of the states, and to revive the feelings and reflections which gave rise to our happy form of union, to remind us of the sacrifices and concessions which established our national independence and prosperity, and to teach our countrymen that there is danger of losing the substance of the liberties now enjoyed, by grasping at the

shadow of universal emancipation. If I am mistaken in this, *Virginia* may still derive some consolation from the reflection, that the danger was one which she did not seek and could not shun.

The legislature of *New York*, it is believed, have not concurred in the views of her executive, and though the subject was submitted to them at their last session, they failed to express any opinion directly on the subject of this controversy. I should infer nothing unfavourable from this, but for the passage of an act by that body, after this subject was before them, giving, or designing to give, the right of trial by jury to slaves arrested in that state on the claim of their owners, and imposing very serious obstacles to the recovery of this species of property, and very severe penalties on the unsuccessful assertion of the master's rights. A similar statute of that state, it is believed, has been heretofore annulled by the state judiciary, as contravening the federal constitution, and the act of congress of 1793.

The adoption of retaliatory measures by the slaveholding states, if this denial of our rights is persevered in, would probably arrest the evil, and lead to a speedy adjustment of these questions. But as too early a resort to such means, might probably preclude a dispassionate recognition of our rights, and as we cannot distrust the justice of our demands, and ought not to anticipate a want of fidelity in our countrymen to a constitution, which they, like ourselves, have sealed with their blood, and sanctioned by their oaths, *Virginia* is reluctant to follow the example of the governor of *New York*, and consider our federal compact at an end. It remains to be seen whether the expression of one common feeling and one resolution on the part of the slaveholding states, will hereafter prevent some such necessity. It is very evident that the single infraction of the constitution which has occurred in this instance, if not redressed, may lead to the total subversion of those amicable and intimate relations which that instrument was designed to establish between the states, and that in their intercourse with each other, they will be exposed, under the construction of governor *Seward*, to all the inconveniences and all the dangers to which foreign and hostile nations are subject.

I have the honour, sir, to request that your excellency will bring this subject to the consideration of the legislature of your state, and to offer the assurance of the distinguished esteem, &c.

With which, I am,

Your ob't serv't,

THOMAS W. GILMER.

To his Excellency the Governor of

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